TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 1066

CHARLES W. BAKER, ET AL., APPELLANTS,

vs.

JOE C. CARR, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

FILED MAY 26, 1960

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 103

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INDEX

	Original	Print
Record from the United States District Court for the Middle District of Tennessee, Nashville Division		
Complaint	5	1
Exhibit "A"—Chart and map entitled "A fair distribution of the seats in the House should group the counties as shown below"	31	21
Exhibit "B"—Chart and map entitled "A fair distribution of the Senators should group the counties into the districts shown"	32	23
Exhibit "C"—Chart and map entitled "Senatorial districts vary between 131,971 (most 8th Dist.) and 25,190 (least 13th Dist.)	33	25
Exhibit "D"—Chart and map entitled "Distribution of the 99 House seats under the Act of 1901"	34	27
Exhibit "E"—Chart and map entitled "In Tennessee Minority Rules"	35	29
Exhibit "F"—Chart and map entitled "In Tennessee Minority Rules"	36	31

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 18, 1961

	Original	Print
Record from the United States District Court for the Middle District of Tennessee, Nashville Division--Continued		
Complaint—Continued		
Exhibit "G"—Act of the Tennessee Legislature (H.B. 760 and S.B. 598)	37	32
Transcript of journal of Senate of Eighty-First General Assembly of Tennessee on Senate Bill No. 598	41	36
Summons and returns	47	39
Motion of Joe C. Carr, et al., to dismiss action	52	46
Motion of Hubert Brooks to dismiss the action	54	47
Motion of Joe C. Carr, et al., to dismiss the action without assembling a three-judge court	56	48
Affidavit of James M. Glasgow as to jurisdictional papers filed in Supreme Court of the United States in the case of Kidd, et al. v. McCanless, No. 469 October Term 1956	58	49
Jurisdictional statement	61	50
Statement in opposition to appellants' statement of jurisdiction and motion to dismiss	97	71
Order permitting amendment to complaint	114	85
Amendment to complaint	115	85
Memorandum opinion on convening three-judge court, Miller, J.	119	88
Order denying motion to dismiss without assembling a three-judge court	129	94
Designation of three-judge court by Acting Chief Judge of United States Court of Appeals for the Sixth Circuit	130	94
Motion of Ben West to intervene as a plaintiff	131	95
Motion of City of Chattanooga to intervene	133	96
Order allowing City of Chattanooga to file complaint in intervention	134	97
Complaint of City of Chattanooga as intervenor	135	98
Order permitting Ben West permission to file intervening complaint and to become a party plaintiff	137	99

	Original	Print
Record from the United States District Court for the Middle District of Tennessee, Nashville Division—Continued		
Intervening complaint of Ben West	138	100
Exhibit 1—City of Nashville Council Resolution 59-198	165	123
Exhibit 2—Documented survey of legislative apportionment in Tennessee, 1870-1929	169	126
Exhibit 3—Chapter No. 14, House Bill No. 123 of Tennessee Legislature passed February 5, 1959 and approved February 13, 1959	210	161
References by Solicitor General of Tennessee to entries in Senate and House Journals of the General Assembly of Tennessee, re: Taxes	271	209
Attachment—Letter dated August 25, 1959 from Chief Clerk of Tennessee Senate to "General Allison Humphreys"	274	211
Attachment—House vote on House Bill No. 123	275	212
Motion to amend and supplement intervening petition of Ben West	277	213
Opinion, Per curiam	279	214
Order dismissing complaint	289	220
Order allowing City of Knoxville and City of Chattanooga to intervene as parties plaintiff; also allowing City of Nashville to amend and supplement petition	290	221
Amendment and supplement to the intervening petition filed by the plaintiff, Ben West	293	223
Exhibit 4—Counties having an excess of direct representatives according to 1900, 1910 and 1950 voting populations	299	229
Exhibit 5—Counties having a deficiency of direct representatives according to 1900, 1910 and 1950 voting populations	302	232
Exhibit 6—Counties receiving a direct representative in a Tennessee General Assembly Meeting between 1901 and 1959	305	235
Exhibit 7—Tennessee Senatorial Districts in 1901 and 1951, by counties and voting population in 1900 and 1950	306	236

	Original	Print
Record from the United States District Court for the Middle District of Tennessee, Nashville Division—Continued		
Amendment and supplement to the intervening petition filed by the plaintiff, Ben West—Continued		
Exhibit 8—State aid for education for fiscal year 1957-58 showing total aid to all school systems within a county and average state aid per pupil in average daily attendance for 1957-58, etc.	311	241
Exhibit 9—1957-58 apportionment of 2¢ of 7¢ state gasoline and motor fuel tax, by county, etc.	318	248
Exhibit 10—Map showing apportionment of seats in the House of Representatives—1901	325	255
Exhibit 11—Map showing apportionment of seats in the House of Representatives—1951	326	256
Exhibit 12—Map showing apportionment of seats in the Senate—1901	327	257
Petition of City of Knoxville to intervene	328	258
Attachment—Authorization of Council of the City of Knoxville to intervene	332	260
Attachment—Resolution No. 2690 of the City Council of the City of Knoxville	334	261
Exhibit 1—Instructions to Election Officials and Watchers	336a	261
Notice of Charles W. Baker of appeal to the Supreme Court of the United States	379	310
Order authorizing transmittal of original record	386	314
Clerk's certificate (omitted in printing)	387	314
Order noting probable jurisdiction	389	314

[fol. 5]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE

Civil Action No. 2724

CHARLES W. BAKER, DAVID N. HARSH, EDMUND ORGILL, ROY DIXON, HERBERT S. ESCH, JACK W. LEE, MRS. JAMES M. TODD, W. D. HUDSON, GUY L. SMITH, and JOHN R. MCGAULEY, Plaintiffs,

vs.

JOE C. CARR, Secretary of State of State of Tennessee; GEORGE H. MCCANLESS, Attorney General of Tennessee; JERRY MCDONALD, Coordinator of Elections; and DR. SAM COWARD OF OVERTON COUNTY, TENNESSEE, JAMES ALEXANDER OF CARROLL COUNTY, TENNESSEE, and HUBERT BROOKS OF WASHINGTON COUNTY, TENNESSEE, Members Constituting the State Board of Elections, Defendants.

COMPLAINT—Filed May 18, 1959

Charles W. Baker, David N. Harsh, Edmund Orgill, Roy Dixon, Herbert S. Esch, Jack W. Lee, Mrs. James M. Todd, W. D. Hudson, Guy L. Smith, and John R. McGauley, plaintiffs above named, respectfully represent as follows:

I.

That this Court has original jurisdiction of this action, and that the plaintiffs have the right to bring this suit under the Civil Rights Act, 17th Stat. L. 13, and 16 Stat. L. 144; U. S. Code, Title 42, Secs. 1983 and 1988, as follows:

[fol. 6] "Section 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or

Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress." (R. S. Sec. 1979)

"Section 1988. Proceedings in vindication of civil rights. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, * * *" (R. S. Sec. 722)

Additionally, this Court has jurisdiction under 62 Stat. L. 932, 28 U.S.C. Section 1343 (3). This section reads as follows:

"Section 1343. Civil rights.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:—

* * * * * * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

II.

That, under 62 Stat. L. 968; 28 U.S.C. 2281 et seq., special provision is made for hearing causes of action involving restraining the enforcement, operation or execution of any state statute by restraining the action of any officer of such state whenever said application is based on the unconstitutionality of such statute.

[fol. 7] III.

That the plaintiffs are citizens of the United States and of the State of Tennessee, and, as qualified voters in said State, are entitled to vote for the members of the Legislature of the State of Tennessee. In particular:

Plaintiff, *Charles W. Baker*, resides in Shelby County, Tennessee, is Chairman of the Shelby County Court, and is a qualified voter in said County;

Plaintiff, *David N. Harsh*, resides in Shelby County, Tennessee, is Chairman of the Shelby County Commission, and is a qualified voter in said County;

Plaintiff, *Edmund Orgill*, resides in the City of Memphis, Shelby County, Tennessee, is the Mayor of said said City, and is a qualified voter in said City and County;

Plaintiff, *Roy Dixon*, resides in Shelby County, Tennessee, and is a qualified voter in said County;

Plaintiff, *Herbert S. Esch*, resides in Memphis, Shelby County, Tennessee, and is a qualified voter in said City and County;

Plaintiff, *Jack W. Lee*, resides in Davidson County, Tennessee, and is a qualified voter in said County;

Plaintiff, *Mrs. James M. Todd*, resides in Davidson County, Tennessee, and is a qualified voter in said County;

Plaintiff, *Guy L. Smith*, resides in Knoxville, Knox County, Tennessee, and is a qualified voter in said City and County;

Plaintiff, *John R. McGauley*, resides in Hamilton County, Tennessee, and is a qualified voter in said County;

Plaintiff, *W. D. Hudson*, resides in Montgomery County, Tennessee, is a Judge of the County and Criminal Court of Montgomery County, and is a qualified voter in said County.

That the aforenamed plaintiffs jointly and severally bring this action on their own behalf and on behalf of all other voters in the State of Tennessee.

IV.

That the defendants are all citizens of the United States and of the State of Tennessee and reside within the said State. In particular:

[fol. 8] Defendant, *Joe C. Carr*, is the duly elected, qualified and acting Secretary of State of the State of Tennessee, with his office in Nashville in said State, and as such he is charged with the duty of furnishing blanks, envelopes and information slips to the County Election Commissioners, certifying the results of elections and maintaining the records thereof; and he is further ex officio charged, together with the Governor and the Attorney General, with the duty of examining the election returns received from the County Election Commissioners and declaring the election results, by the applicable provisions of the Tennessee Code Annotated, and by Chapter 164 of the Acts of 1949, inter alia.

Defendant, *George F. McCanless*, is the duly appointed and acting Attorney General of the State of Tennessee, with his office in Nashville in said State, and is charged with the duty of advising the officers of the State upon the law, and is made by Section 23-1107 of the Tennessee Code Annotated a necessary party defendant in any declaratory judgment action where the constitutionality of statutes of the State of Tennessee is attacked, and he is ex-officio charged, together with the Governor and the Secretary of State, with the duty of declaring the election results, under Section 2-140 of the Tennessee Code Annotated.

Defendant, *Jerry McDonald*, is the duly appointed Coordinator of Elections in the State of Tennessee, with his office in Nashville, Tennessee, and as such official, is charged with the duties set forth in the public law

enacted by the 1959 General Assembly of Tennessee creating said office.

Defendants, *Dr. Sam Coward*, *James Alexander*, and *Hubert Brooks* are the duly appointed and qualified members constituting the State Board of Elections, and as such they are charged with the duty of appointing the Election Commissioners for all the counties of the State of Tennessee, the organization and supervision of the biennial elections as provided by the Statutes of Tennessee, Chapter 9 of Title 2 of the Tennessee Code Annotated, Sections 2-901, et seq.

That this action is brought against the aforenamed defendants in their representative capacities, and that said Election Commissioners are sued also as representatives of all of the County Election Commissioners in the State of Tennessee, such persons being so numerous as to make it [fol. 9] impracticable to bring them all before the court; that there is a common question of law involved, namely, the constitutionality of Tennessee laws set forth in the Tennessee Code Annotated, Section 3-101 through Section 3-109, inclusive; that common relief is sought against all members of said Election Commissions in their official capacities, it being the duties of the aforesaid County Election Commissioners, within their respective jurisdictions, to appoint the judges of elections, to maintain the registry of qualified voters of said County, certify the results of elections held in said County to the defendants State Board of Elections and Secretary of State, and of preparing ballots and taking other steps to prepare for and hold elections in said Counties by virtue of Sections 2-1201, et seq. of Tennessee Code Annotated, and Section 2-301, et seq. of Tennessee Code Annotated, and Chapter 164 of the Acts of 1949, inter alia.

V.

That plaintiffs are now denied the right to equal suffrage in free and equal elections, which right is granted them by the Constitution of the State of Tennessee, and the equal protection of the laws, as guaranteed by both the Consti-

tution of the State of Tennessee and by the Fourteenth Amendment to the Constitution of the United States, and they bring this action on their own behalf and on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee who are similarly situated, under Chapter 11 of Title 23 of the Tennessee Code Annotated, Sections 23-1101, et seq. for a declaration of their rights and a declaration of the validity or invalidity of the private and public acts or statutes which apportion the representatives and senators among the coun- [fol. 10] ties of the State of Tennessee, and for such injunctive relief as may be proper to assure them and all other voters of the State of Tennessee free and equal franchise and equal protection of the laws which are now and have been for many years denied them by the defendants and their predecessors in office who have complied with certain unconstitutional statutes and private acts, all of which being particularly set forth herein.

VI.

That Article 14, Section 1 of the United States Constitution provides, in part, as follows:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

This provision of the Constitution of the United States contains a guarantee to the citizens of the right to vote in state elections and that their votes shall be equally effective with any other votes cast in said state elections.

VII.

That the Constitution of the State of Tennessee establishes, defines and guarantees to these plaintiffs, as well as to all other voters of the State of Tennessee, free and equal suffrage in free and equal elections by virtue of:

(1) Section 5 of Article I established the rights of these plaintiffs and all other qualified voters of Tennessee to free and equal elections and suffrage:

"Sec. 5. That elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon a conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by a Court of competent jurisdiction."

[fol. 11] (2) Section 1 of Article IV defines qualified voters who are guaranteed the right to free and equal elections and suffrage in Section 5 of Article I, supra:

"Section 1. Every person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein such person may offer to vote for three months, next preceding the day of election, shall be entitled to vote for electors for President and Vice-President of the United States, members of the General Assembly and other civil officers for the county or district in which such person resides; and there shall be no other qualification attached to the right of suffrage."

(3) Sections 4, 5, and 6 of Article II define the term "General Assembly" as used in this Constitution, prescribe the method by which its members shall be chosen and set out a formula which must be applied every ten years in apportioning the members of the General Assembly among the counties of the State in accordance with the number of qualified voters residing in each of the counties respectively:

"Sec. 4. An enumeration of the qualified voters, and an apportionment of the Representatives in the General Assembly, shall be made in the year one thousand eight hundred and seventy-one, and within every subsequent term of ten years."

"Sec. 5. The number of Representatives shall, at the several periods of making the enumeration, be appor-

tioned among the several counties or districts, according to the number of qualified voters in each, and shall not exceed seventy-five, until the population of the State shall be one million and a half, and shall never exceed ninety-nine; Provided, That any county having two-thirds of the ratio shall be entitled to one member."

"Sec. 6. The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each, and shall not exceed one-third the number of Representatives. In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of members of the House of Representatives, shall be made up to such county or counties in the Senate as near as may be practicable. When a district is composed of two or more counties they shall be adjoining, and no counties shall be divided in forming a district."

[fol. 12] The intent and purpose of the aforesaid provisions of the said Constitution is that the members of the legislature must be elected by the people of the State of Tennessee on a basis of fair and equal representation of the individual electors in said State and that said senators and representatives must be equally apportioned throughout the State in districts which are arranged in proportion to the qualified voters therein.

VIII.

That the plaintiffs, as citizens of the United States and of the State of Tennessee, have the right conferred by the Constitution of the State of Tennessee to have the entire membership of the Tennessee Legislature reapportioned and elected on the basis of the 1950 Federal Census.

That Sections 8 and 16 of Article XI of the Constitution of the State of Tennessee guarantee the rights of these plaintiffs and all other qualified voters of the State of Tennessee to equal suffrage in free and equal elections as established by Section 5 of Article I and defined in Section

1 of Article IV, Sections 4, 5 and 6 of Article II and Section 5 of Article XI by denying to the Legislature the power to grant special privileges and extraordinary rights to the residents of individual counties.

"Sec. 8. The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals, inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals rights, privileges, immunities, or exemptions, other than such as may be, by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law."

"Sec. 16. The declaration of rights, hereto prefixed, is declared to be a part of the Constitution of this State, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the Bill of Rights contained is excepted out of the general powers of the government, and shall forever remain inviolate."

[fol. 13] IX.

That the last reapportionment of the senatorial and representative districts was based on the 1900 Federal Census and was established by Chapter 122 of the Public Acts of Tennessee of 1901; this chapter now constitutes Sections 3-101 to 3-109 of the Tennessee Code Annotated. There have been five Federal enumerations of the population of the State of Tennessee since 1900, namely, 1910, 1920, 1930, 1940, and 1950. All of the Tennessee Legislatures after each such enumeration have been under a constitutional mandate in accordance with their oaths of office to support the Constitution of the United States and the Constitution of the State of Tennessee, described by Article II, Sections 4, 5, and 6, of the Tennessee Constitution, to reapportion said senatorial and representative districts in accordance with the result of the latest available enumeration. Since the Federal Census of 1910, there have been numerous regu-

lar and extra sessions of the Tennessee Legislature; however, each and every such Legislature, including the present Legislature up to the time of the issuance of this complaint, has failed to reapportion and readjust the boundaries of said districts, all in violation of the Constitution of the United States and the Constitution of the State of Tennessee.

X.

That since the 1870 Constitutional Convention and the constitutional apportionment of 1871, the Legislature of the State of Tennessee reapportioned itself three times, to-wit, in the years 1881, 1891, and 1901. But, since 1901, no Legislature of the State of Tennessee has ever reapportioned itself, pursuant to the mandate of Article II, Sections 4, 5, and 6 of the Tennessee Constitution, or otherwise, [fol. 14] except that certain minor modifications in the 1901 Legislative apportionment Act were made in some subsequent years to adjust the boundaries of certain individual districts in a manner not material to this proceeding.

XI.

That the plaintiffs, as citizens of the United States and the State of Tennessee, possess the inherent right to vote for members of the State Legislature and to cast votes that are equally effective with the votes of every other citizen of said State, that said rights are both recognized and guaranteed by the Constitution of the United States and the Constitution of the State of Tennessee, but that, because of the population changes since 1900, and the failure of the Legislature to reapportion itself since 1901, the plaintiffs' votes are not as effective as the votes of the voters residing in other senatorial and representative districts in the State of Tennessee. The population of the State of Tennessee in 1900, based on the Federal Census of that year, was 2,021,000, while the population in 1950, based on the Federal Census of that year, was 3,292,000, and that the growth of the various counties of the State during this fifty year period has been very uneven.

XII.

That the Reapportionment Act, Chapter 122 of the Public Acts of Tennessee, passed February 2, 1901, ran its course and became unconstitutional and obsolete in 1911 by virtue of the explicit requirements of Sections 4, 5, and 6 of Article II that a new enumeration of qualified voters and a new apportionment of memberships in the General Assembly should be made in the year 1871 and within every subsequent term of ten years.

[fol. 15] XIII.

That the said Reapportionment Act of 1901, as amended, is unconstitutional because:

Said Act denies to Shelby County the additional number of Representatives and Senators to which Shelby County is entitled and upon which the plaintiffs Charles W. Baker, David N. Harsh, Edmund Orgill, Roy Dixon and Herbert S. Esch and their fellow voters are entitled to vote by virtue of the fact that Shelby County has had a sufficient number of qualified voters since prior to 1950 to entitle it to the additional representatives, as shown by Exhibits "A" and "B" hereto attached and made a part hereof.

Said Act denies to Davidson County the additional number of Representatives and Senators to which Davidson County is entitled and upon which the plaintiffs Jack W. Lee and Mrs. James M. Todd and their fellow voters are entitled to vote by virtue of the fact that Davidson County has had a sufficient number of qualified voters since prior to 1950 to entitle it to the additional Representatives, as shown by Exhibits "A" and "B" hereto attached and made a part hereof.

Said Act denies to Knox County the additional number of Representatives and Senators to which Knox County is entitled and upon which the plaintiff Guy L. Smith and his fellow voters are entitled to vote by virtue of the fact that Knox County has had a sufficient number of qualified voters since prior to 1950 to entitle it to the additional Representatives, as shown by Exhibits "A" and "B" hereto attached and made a part hereof.

Said Act denies to Hamilton County the additional number of Representatives and Senators to which Hamilton County is entitled and upon which the plaintiff John R. McGauley and his fellow voters are entitled to vote by virtue of the fact that Hamilton County has had a sufficient number of qualified voters since prior to 1950 to [fol. 16] entitle it to the additional Representatives, as shown by Exhibits "A" and "B" hereto attached and made a part hereof.

The Senatorial districts and counties, as they were fixed by the Act of 1901, as amended, and from which the members of the Senate and House of Representatives in the General Assembly are elected, are not divided in accordance with the number of voters in each of the counties and districts, as is illustrated by Exhibits "C" and "D" attached hereto and made a part hereof, and, therefore, the distribution of Senators and Representatives is arbitrary and contrary to the provisions of the Tennessee Constitution; that plaintiffs, and others similarly situated, suffer a debasement of their votes by virtue of the incorrect, arbitrary, obsolete and unconstitutional apportionment of the General Assembly, and that they, and all others similarly situated, thereby are denied an equal right to suffrage in free and equal elections and equal protection of the laws required by the Constitution of the State of Tennessee in Section 5 of Article I, and in Sections 4, 5, and 6 of Article II and Sections 8 and 16 of Article XI thereof.

By a purposeful and systematic plan to discriminate against a geographical class of persons and deny them the equal protection of the law, these plaintiffs and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes.

XIV.

That the preceding paragraph is illustrative of the discrimination now made among the various electoral districts of the State of Tennessee; that when all inequalities are taken together, the violations of the particular constitutional provisions set out above and as shown in Exhibits

"C" and "D" result in a distortion of the constitutional system as established, defined, and guaranteed by the Con- [fol. 17] stitution of the State of Tennessee and the Fourteenth Amendment to the Constitution of the United States; that this distortion of our system of electing representatives to the General Assembly prevents it, as it is now composed, from being a body representative of the people of the State of Tennessee, since a minority of approximately 37 percent of the voting population of the State now controls twenty of the thirty-three members of the senate, as shown by Exhibit "E" attached hereto and made a part hereof, and a minority of 40 percent of the voting population of the State now controls sixty-three of the ninety-nine members of the House of Representatives, as shown by Exhibit "F" attached hereto and made a part hereof; and that thus a minority now rules in Tennessee by virtue of its control of both Houses of the General Assembly, contrary to the basic principle of representative government as set out in the Constitution of the State of Tennessee in Section 1 of Article I, "that all power is inherent in the people and all free governments are founded on their authority and instituted for their peace, safety and happiness; for the advancement of those ends they have at all times an inalienable and indefeasible right to alter, abolish or reform the government in such manner as they think proper", and contrary to the philosophy of government in the United States and all Anglo-Saxon jurisprudence in which the legislature has the power to make law only because it has the power and duty to represent the people.

XV.

The constitutional requirements of the State of Tennessee can only be met by a distribution of the representatives and senators among the counties of the State of Tennessee in accordance with their respective qualified voters, and the [fol. 18] proper distribution of such representatives and senators may be proved mathematically by applying the constitutional formulae to the figures taken from the United States Census of 1950 showing the population of each County of the State of Tennessee, as approximately shown

in Exhibits "A" and "B" attached hereto and made a part hereof.

XVI.

That, for the purpose of informing the members of the 81st General Assembly of Tennessee of the intentions of the plaintiffs to seek reapportionment of the Legislature as is herein sought, plaintiffs, through their authorized attorneys at law, shortly after the convening of the 81st General Assembly of Tennessee in January, 1959, addressed to each member of the Senate and House of Representatives and mailed same to the mail addresses of all of said Senators and Representatives, the following Letter:

"Dear (Senator or Representative:

A number of citizens of Tennessee, especially interested in the proper apportionment of the Tennessee Legislature in accordance with the provisions of the State Constitution, have engaged attorneys at law to institute legal proceedings in the Federal Court if the present Tennessee Legislature does not enact legislation in conformity with the constitutional formula for reapportionment, and the undersigned are among the attorneys engaged for this purpose.

We feel that it is proper to notify you, as a member of the 1959 General Assembly, of the contemplated institution of this suit for reapportionment, which will be based, in material part, on the failure of the present legislature to carry out the mandate of our Constitution. We wish to assure you that there is nothing personal in our approach, as counsel, to the proper solution of this long standing problem, but we feel that you should have knowledge beforehand of the plan referred to in order to take appropriate action before the adjournment of the present legislature.

With every good wish,

Yours very truly,

/s/ Walter Chandler
Hobart Atkins"

[fol. 19] XVII.

That the 81st General Assembly of Tennessee adjourned on the 20th day of March, 1959, without passing any bill or resolution to reapportion itself in conformity with the Constitution of Tennessee, although a number of bills or resolutions for such purpose were introduced during said session, and the following bills were voted on and defeated by record votes:

Senate Bill No. 524, to reapportion the Tennessee General Assembly, failed of passage in the Senate by a vote of 14 Ayes and 18 Noes. A transcript of the journal of the Senate showing the action taken on said bill will be introduced at the hearing hereof.

Senate Bill No. 598, to reapportion the Tennessee Legislature in accordance with the constitutional formula, failed of passage in the Senate by a vote of 13 Ayes and 20 Noes. A copy of said bill and a transcript of the journal of the Senate showing the action taken thereon is annexed hereto as Exhibit "G" and made a part hereof.

House Bill No. 760, a companion bill of Senate Bill No. 598, to reapportion the Tennessee General Assembly, failed of action in the House of Representatives.

House Joint Resolution No. 76, to direct the Legislative Council "to make a study of the steps taken by other states in recent years to reapportion the membership of their legislative bodies among the several counties or districts of said states," failed of passage in the House of Representatives by a vote of 37 Ayes and 54 Noes.

[fol. 20] That by failing to pass the bills or adopting the resolution hereinabove mentioned, and by failing to enact a proper reapportionment law for the Legislature of 1961, as required by the provisions of the Constitution of Tennessee hereinabove cited, the 81st General Assembly of Tennessee continued the purposeful and systematic plan to discriminate against a geographic class of persons represented by the qualified voters enumerated in the Federal Census of 1950, thereby violating their solemn oaths to support the Constitution of Tennessee and the Constitution of the United States of America.

That by reason of the aforesaid failure of the 81st General Assembly of Tennessee to reapportion the legislative

districts of the State in conformity with the Constitution of Tennessee, thus violating the constitutional rights of these plaintiffs and depriving them and others of the equal protection of the laws, as hereinabove set forth, a serious justiciable controversy has arisen.

XVIII.

That the General Assembly of Tennessee, for a number of years, has denied to plaintiffs and others similarly situated the equal protection of the laws by unjustly discriminating against large segments of the population of the State in the allocation of the burdens of taxation and in the unequal and unjust distribution of funds derived by the State through the exercise of the taxing power, as represented by statutes passed to raise and distribute revenues, notably for the support of the public schools of the State, counties, municipalities, and school districts, and for the maintenance of roads and highways, and for other purposes; that the said General Assembly, over a period of years, enacted and has maintained an arbitrary, unreasonable and discrim- [fol. 21] inatory formula for the making of contributions to the needs of County governments, in that, of the seven cents (7¢) collected by the State for the storage and sale of each gallon of gasoline, "a sum equal to that derived from the levy of two cents for each gallon" is paid into a separate fund known as "County Aid Funds", Section 54-403 of the Tennessee Code Annotated providing for the distribution of this fund in the following language:

> "Said 'county aid fund' so derived from the two cents (2¢) gasoline privilege tax, shall be divided and distributed by the department of highways and public works to the various counties of the state as follows: One-half (½) of said fund shall be distributed equally among the ninety-five (95) counties of the state, and fifty per cent (50%) of the balance shall be distributed among the ninety-five (95) counties on the basis of area and fifty per cent (50%) on basis of population, as of the most recent federal census, and shall be paid over monthly by the director of accounts of the state to the various county trustees, to be used by the county highway authorities in the building, repairing and improvement of county roads and bridges * * *";

that by Public Chapter No. 14 enacted by the 1959 General Assembly, provision was made for the distribution of the taxes collected in support of the educational system of the State, whereby the pattern established in previous years by said unlawfully apportioned general assemblies has been continued by fixing first what purports to be a formula whereby each county's and city's ability to contribute to the education of the children therein is determined, and thereinafter exempting by proviso those over-represented counties from all application of the formula and guaranteeing to them school funds in the amounts previously had by such counties, despite their failure to contribute to their own educational systems on the basis required by said formula for the counties in which plaintiffs and others similarly situated live, the final paragraph of the formula, the [fol. 22] exempting proviso, and the guarantee of funds appearing in subparagraph (4) of Section 4 of said Act, and reading as follows:

> "Multiply each county's per cent of the total estimated value of taxable property determined as in subsection (3) of this section by Eighteen Million, One Hundred Twenty Thousand ($18,120,000.00) Dollars; and the product shall constitute the amount of funds which the county, as an equalizing county, shall raise, per annum, from local sources as its share of the cost of the minimum foundation school program for current operation and maintenance of the public schools, grades one through twelve; in no event, however, shall any county which was an equalizing county for the fiscal school year 1953-54 and which received State equalizing funds as such be required to raise during either fiscal school year of the biennium 1959-61 more money locally from all sources for school purposes than it did raise as a requirement for participation in State equalizing funds for the fiscal school year 1953-54; provided, however, that the additional amount of State funds represented by the 'guarantee' as set forth hereinabove in this subsection shall be limited to the amount of such 'guarantee' as calculated for the school year 1958-59.
>
> "Where a county, city, or special school district receives Federal funds by virtue of being affected by the impact

> of Federal installations, the State Board of Education is hereby authorized to increase the amount of local funds required for such school system to participate in State funds, as provided in subsection (4) of this section, by the total amount, or any part thereof, of Federal Funds so received.";

and that, in the allocation of sales and use taxes, alcoholic beverage taxes, income taxes, beer taxes, and other taxes levied on the people of the State of Tennessee by such unlawfully apportioned General Assemblies, the discriminations provided in said statutes have been made possible and effective by the failure or refusal of the Legislatures of the State of Tennessee to follow the mandates of the State Constitution requiring the reapportionment of the General Assembly in each ten years after the year 1900.

[fol. 23]

XIX.

That the provisions of the formulae of the Constitution establishing and defining and guaranteeing the right to free and equal elections and equal suffrage to all are so far self-executing that the courts have complete jurisdiction to require the next election to be held in accordance with the constitutional formulae.

XX.

That the defendants, or their successors in office, unless prevented by this Court, will perform their duties as they and their predecessors in office have performed their duties for over fifty years under the unconstitutional Act of 1901, and the rights of these plaintiffs and all other qualified voters of Tennessee similarly situated, can be protected only by decree of this Court declaring the Act of 1901, together with all Acts amending it, to be unconstitutional, and by enjoining the defendants from holding another unconstitutional election in 1960, or thereafter, and by requiring either:

(a) that the defendants exercise their respective duties and prepare for the election of 1960 in such manner that

the election will be held at large over the State as a whole, whereby every qualified voter shall have the right to vote for every member of the Senate and House of Representatives to be elected to the 1961 General Assembly, or

(b) that the defendants obey a decree of this Court redistricting the State by mathematically applying the formulae set out in the Constitution by referring to the 1950 official Federal Census population figures of the various counties of the State, unless and until the General Assembly of the State of Tennessee, by proper law, reapportions [fol. 24] constitutionally the representatives and senators among the counties of the State.

Wherefore, Premises Considered, Plaintiffs respectfully pray that this Court take jurisdiction of this matter; that a special three-judge Court be called to hear and determine this cause as by law provided in 62 Stat. L. 968; 28 U.S.C. Sec. 2281, et seq., and declare the rights of the plaintiffs pursuant to 68 Stat. L. 890, 28 U.S.C. Sec. 2201, in the premises to-wit:

A. That the present legislative apportionment of the State of Tennessee has deprived and continues to deprive the plaintiffs of liberty and property without due process of law and has denied and continues to deny the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

B. That Sections 3-101 to 3-109, inclusive, of the Tennessee Code Annotated, are void and invalid as being contrary to the Fourteenth Amendment of the Constitution of the United States, and the Constitution of the State of Tennessee because of the failure to reapportion the legislative districts of the State of Tennessee in accordance with present qualified voters as herein averred.

C. That the right of the plaintiffs to vote as guaranteed by Article 1, Section 5 and Article 4, Section 1 of the Constitution of the State of Tennessee has been impaired.

And plaintiffs further particularly pray that, after hearing of this action, the Court grant further relief in accordance with 62 Stat. L. 964, 28 U.S.C. Section 2202 as follows:

D. To restrain the defendants from furnishing forms for nominations, from receiving nomination petitions and papers, from certification of nominations or elections, and [fol. 25] from any other acts necessary to the holding of elections for members of the Tennessee Legislature in districts as established by Tennessee Code Annotated, Sections 3-101 to 3-109, inclusive, until such time as the said Legislature enacts legislation reapportioning the State senatorial and representative districts according to the Constitution of the State of Tennessee.

E. To direct the defendants to declare the next primary and general elections for members of the Tennessee Legislature on an at-large basis, and to direct them to take whatever further action is necessary to insure that all candidates for election to the 1961 session of the Tennessee Legislature run at-large throughout the entire State on the following basis: thirty-three (33) candidates for the State Senate receiving the highest number of votes shall be declared elected to the State Senate; and ninety-nine (99) candidates for the House of Representatives receiving the highest number of votes shall be declared elected to the House of Representatives; and said method of election to continue until such time as the said Legislature enacts legislation reapportioning the State senatorial and representatives districts according to the Constitution of the State of Tennessee.

F. For such other and further relief as may seem just, equitable and proper.

This is the first application for any extraordinary process in this cause.

Charles W. Baker, David N. Harsh, Edmund Orgill, [fol. 26] Roy Dixon, Herbert E. Esch, Jack W. Lee, Mrs. James M. Todd, Guy L. Smith, John R. McGauley, W. D. Hudson.

Denney, Leftwich & Osborn, Nashville, Tennessee, Hobart F. Atkins, Knoxville, Tennessee, Chandler, Manire and Chandler, Memphis, Tennessee, Attorneys for Plaintiffs.

[fol. 27] *Foregoing Complaint duly sworn to by plaintiffs, jurats omitted in printing.*

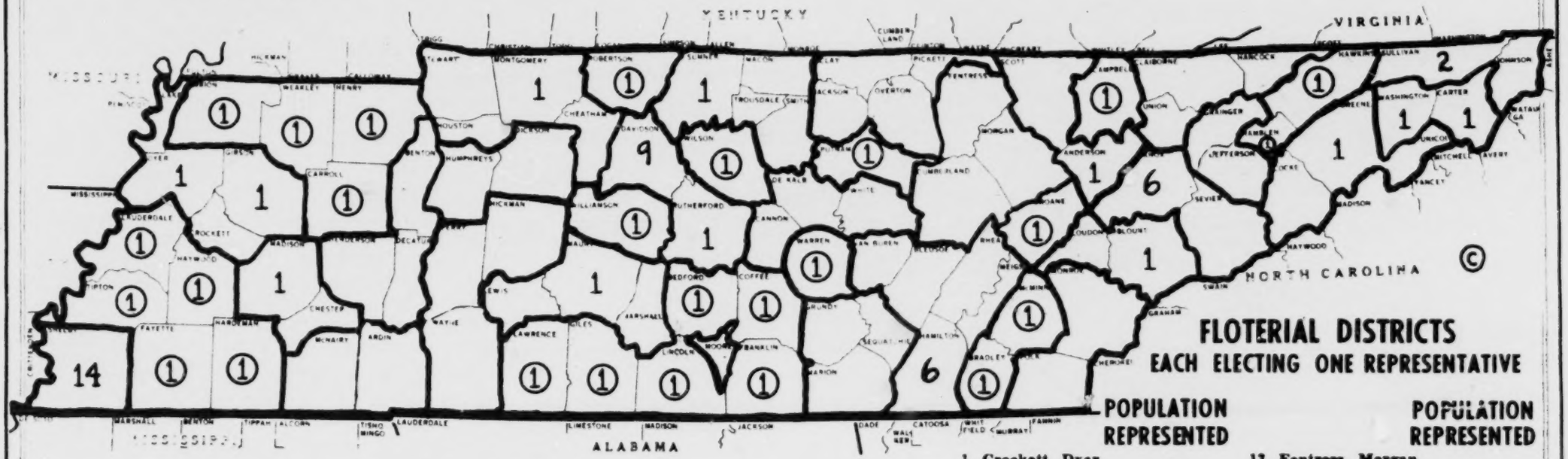
|| - INDICATES THE BOUNDARY BETWEEN THE 3 CONGRESSIONAL DISTRICTS OF EAST TENNESSEE, MIDDLE TENNESSEE, AND WEST TENNESSEE.

① - INDICATES THE COUNTY IS ENTITLED TO ELECT INDEPENDENTLY ONE REPRESENTATIVE BY VIRTUE OF THE TWO-THIRDS RULE SINCE IT HAS MORE THAN 13,325 BUT LESS THAN 19,985 VOTERS.

1,2,3, ETC. - INDICATES THE NUMBER OF REPRESENTATIVES THE COUNTY IS ENTITLED TO ELECT SEPARATELY.

| - INDICATES THE COUNTY, OR GROUP OF COUNTIES, THAT ELECT A REPRESENTATIVE.

A FAIR DISTRIBUTION OF THE SEATS IN THE HOUSE SHOULD GROUP THE COUNTIES AS SHOWN BELOW—



FLOTERIAL DISTRICTS
EACH ELECTING ONE REPRESENTATIVE

	POPULATION REPRESENTED
1. Crockett, Dyer, Gibson, Lake	25,852
2. Chester, Madison	23,651
3. Hardin, McNairy	21,178
4. Benton, Decatur, Henderson	22,785
5. Hickman, Perry, Wayne	18,485
6. Dickson, Humphreys	17,882
7. Cheatham, Houston, Montgomery, Stewart	19,884
8. Lewis, Marshall, Maury, Moore	21,612
9. Davidson, Rutherford	21,628
10. Macon, Smith, Sumner, Trousdale	20,214
11. Cannon, DeKalb, White	21,569
12. Clay, Jackson, Overton, Pickett	23,286
13. Fentress, Morgan, Cumberland	24,958
14. Bledsoe, Hamilton, Meigs, Rhea, Van Buren	20,219
15. Grundy, Marion Sequatchie	20,442
16. Monroe, Polk	20,214
15. Grundy, Marion, Sequatchie	20,442
17. Blount, Loudon	23,632
18. Anderson, Scott	22,422
19. Knox, Sevier	23,587
20. Grainger, Jefferson, Union	23,084
21. Claiborne, Hancock	17,500
22. Cocke, Greene, Unicoi	25,923
23. Carter, Washington	20,300
24. Johnson, Sullivan	20,420

TENNESSEE COUNTIES:

	1960 Voting Population	1950 Voting Population		1960 Voting Population	1950 Voting Population		1960 Voting Population	1950 Voting Population		1960 Voting Population	1950 Voting Population
Anderson	4,130	33,990	Fentress	1,331	7,067	Lake	1,972	6,252	Rhea	3,406	8,937
Bedford	5,777	14,732	Franklin	4,686	14,297	Lauderdale	5,075	14,413	Roane	5,470	17,639
Benton	2,712	7,023	Gibson	9,466	29,832	Lawrence	3,730	15,847	Robertson	6,274	16,456
Bledsoe	1,490	4,198	Giles	7,565	15,935	Lewis	1,075	3,413	Rutherford	7,677	25,316
Blount	4,359	30,353	Grainger	3,576	7,125	Lincoln	6,239	15,092	Scott	2,378	8,417
Bradley	3,687	18,273	Greene	6,967	23,649	Loudon	2,467	13,264	Sequatchie	766	2,904
Campbell	3,976	17,477	Grundy	1,737	6,540	McMinn	4,278	18,347	Sevier	4,434	12,793
Cannon	2,781	5,341	Hamblen	2,997	14,090	McNairy	4,060	11,601	Shelby	43,843	312,345
Carroll	5,884	16,472	Hamilton	16,892	131,971	Macon	2,938	7,974	Smith	4,372	8,731
Carter	3,748	23,303	Hancock	2,274	4,710	Madison	8,756	37,245	Stewart	3,512	5,258
Cheatham	2,467	5,283	Hardeman	5,119	13,565	Marion	4,066	10,998	Sullivan	6,059	55,712
Chester	2,372	6,391	Hardin	4,357	9,577	Marshall	4,591	11,288	Sumner	6,394	20,143
Claiborne	4,559	12,799	Hawkins	5,192	16,900	Maury	11,286	24,556	Tipton	6,970	15,944
Clay	1,853	4,528	Haywood	5,447	13,934	Meigs	1,604	3,039	Trousdale	1,482	3,351
Cocke	4,072	12,572	Henderson	4,050	10,199	Monroe	4,065	12,884	Unicoi	1,320	8,787
Coffee	3,720	13,406	Henry	5,873	15,465	Montgomery	8,712	26,284	Union	2,841	4,600
Crockett	3,556	9,676	Hickman	3,891	7,598	Moore	1,333	2,340	Van Buren	700	2,039
Cumberland	2,237	9,593	Houston	1,545	3,984	Morgan	2,544	8,308	Warren	3,804	13,337
Davidson	17,908	211,930	Humphreys	3,203	6,588	Obion	7,173	18,444	Washington	5,408	36,967
Decatur	2,356	5,563	Jackson	3,178	6,719	Overton	2,925	9,474	Wayne	2,974	7,176
Dekalb	3,656	6,984	James	1,281		Perry	1,967	3,711	Weakley	7,862	18,007
Dickson	4,402	11,284	Jefferson	4,130	11,359	Pickett	1,135	2,565	White	3,118	9,244
Dyer	5,935	20,062	Johnson	2,211	6,649	Polk	2,679	7,330	Williamson	6,271	14,064
Fayette	6,180	13,577	Knox	19,049	140,559	Putnam	3,679	17,071	Wilson	6,550	16,459

TENNESSEE

[fol. 32]

EXHIBIT "B" TO COMPLAINT

(See opposite)☞

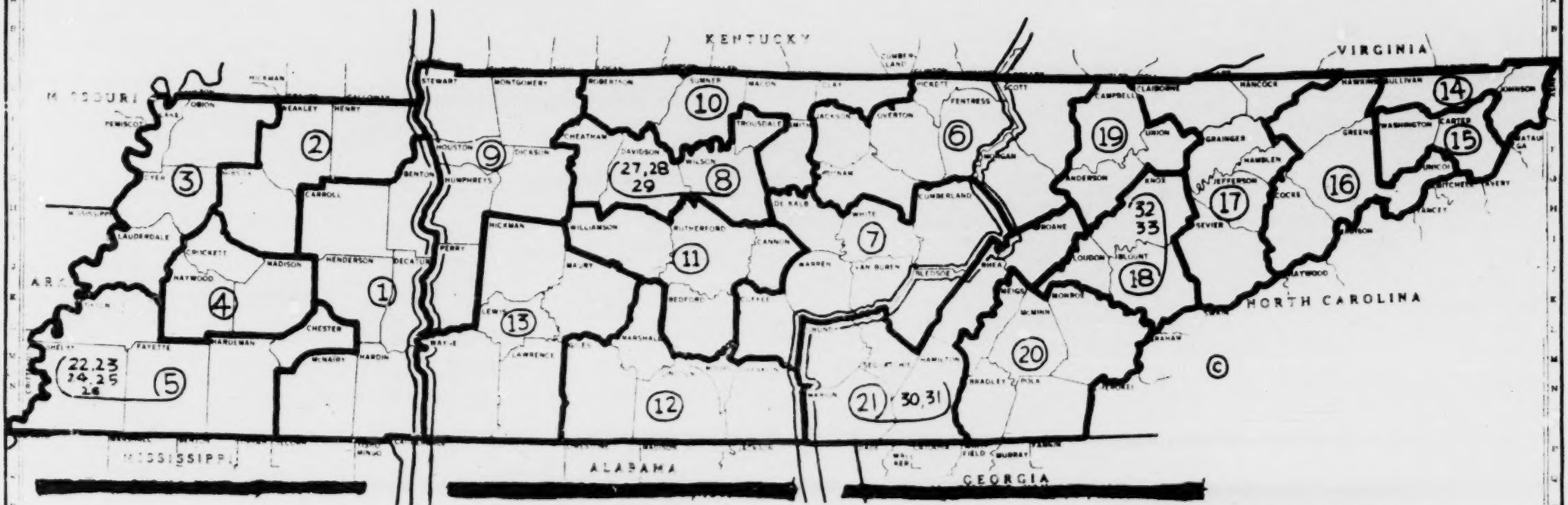
INDICATES THE BOUNDARY BETWEEN THE 3 CONGRESSIONAL DISTRICTS IN EAST TENNESSEE , MIDDLE TENNESSEE, AND WEST TENNESSE

INDICATES GROUP OF COUNTIES WHICH ELECT ONE SENATOR

(1), (2) ETC. INDICATES THE NUMBER OF THE SENATORIAL DISTRICT THAT ELECTS ONE SENATOR; THERE ARE 33 SENATORIAL DISTRICTS.

(21) (30,31) INDICATES A COUNTY THAT ELECTS 2 OR MORE SENATORS AND ALSO SHARES A SENATOR WITH OTHER COUNTIES.

A FAIR DISTRIBUTION OF SENATORS SHOULD GROUP THE COUNTIES INTO THE DISTRICTS SHOWN



TENNESSEE COUNTIES:

	1960 Voting Population	1950 Voting Population		1960 Voting Population	1950 Voting Population		1960 Voting Population	1950 Voting Population		1960 Voting Population	1950 Voting Population
Anderson	1,046	33,980	Fentress	1,651	7,057	Lake	1,972	6,232	Rhea	3,105	8,937
Bedford	5,277	14,702	Franklin	4,096	14,292	Lauderdale	5,975	14,113	Roane	5,870	17,639
Benton	2,712	7,027	Gibson	9,896	29,832	Lawrence	3,103	13,817	Robertson	9,271	16,456
Bledsoe	1,190	4,198	Giles	7,565	15,945	Lewis	866	3,113	Rutherford	7,677	25,316
Blount	1,559	30,356	Grainger	3,556	7,125	Lincoln	6,239	15,692	Scott	2,078	8,417
Bradley	3,687	18,273	Greene	6,087	20,649	Loudon	2,107	13,294	Sequatchie	766	2,984
Campbell	3,978	17,477	Grundy	1,910	6,340	Madison	8,278	18,417	Sevier	1,434	12,793
Cannon	2,781	7,181	Hamblen	2,997	13,698	McNairy	4,946	11,961	Shelby	13,843	312,345
Carroll	5,801	16,172	Hamilton	65,892	131,921	Marion	2,638	7,904	Smith	4,172	8,731
Carter	3,748	25,963	Hancock	2,271	4,710	Madison	8,536	37,245	Stewart	3,512	5,238
Cheatham	2,167	5,263	Hardeman	5,119	13,463	Marion	4,864	10,998	Sullivan	6,059	55,712
Chester	2,172	6,361	Hardin	3,357	9,527	Marshall	4,591	11,298	Sumner	6,394	20,143
Claiborne	3,509	12,799	Hawkins	5,192	16,981	Maury	11,286	21,536	Tipton	6,970	15,944
Clay	1,953	5,528	Haywood	9,147	14,961	Meigs	1,661	3,619	Trousdale	1,182	3,351
Cocke	4,972	12,572	Henderson	3,050	10,199	Monroe	3,065	12,884	Unicoi	1,320	8,787
Coffee	5,729	13,898	Henry	5,874	15,895	Montgomery	8,712	29,284	Union	2,841	4,900
Crockett	3,556	9,676	Hickman	3,894	7,598	Moore	1,333	2,480	Van Buren	780	2,039
Cumberland	2,237	9,593	Houston	1,511	3,081	Morgan	2,541	8,868	Warren	3,869	13,437
Davidson	17,508	211,930	Humphreys	3,203	6,588	Obion	7,175	19,141	Washington	5,108	36,067
Decatur	2,356	5,963	Jackson	4,178	6,719	Overton	2,952	9,471	Wayne	2,974	7,178
Dekalb	3,656	6,884	James	1,287		Perry	1,967	3,511	Weakley	7,962	18,007
Dickson	4,102	11,294	Jefferson	4,143	11,859	Pickett	1,145	2,565	White	3,118	9,244
Dyer	5,935	20,092	Johnson	2,211	6,619	Polk	2,979	7,300	Williamson	6,271	11,061
Fayette	6,190	13,577	Knox	19,019	140,239	Putnam	5,674	17,071	Wilson	6,550	16,459

POPULATION OF SENATORIAL DISTRICTS

1.	BENTON, CARROLL, DECATUR, HARDIN, HENDERSON, McNAIRY	60,435
2.	GIBSON, HENRY, WEAKLY	63,304
3.	DYER, LAKE, LAUDERDALE, OBION	59,171
4.	CROCKETT, HAYWOOD, MADISON	59,855
5.	CHESTER, FAYETTE, HARDEMAN, SHELBY, TIPTON	62,047
6.	FENTRESS, JACKSON, MORGAN, OVERTON, PICKETT, PUTNAM, SCOTT	59,611
7.	BLEDSOE, COFFEE, CUMBERLAND, DEKALB, VAN BUREN, WARREN, WHITE	38,801
8.	DAVIDSON, CHEATHAM, TROUSDALE, WILSON	57,138
9.	DICKSON, HOUSTON, HUMPHREYS, MONTGOMERY, PERRY, STEWART	56,199
10.	CLAY, MACON, ROBERTSON, SMITH, SUMNER	57832
11.	BEDFORD, CANNON, RUTHERFORD, WILLIAMSON	59,453
12.	FRANKLIN, GILES, LINCOLN, MARSHALL, MOORE	58,952
13.	HICKMAN, LAWRENCE, LEWIS, MAURY, WAYNE	58,590
14.	JOHNSON, SULLIVAN	62,361
15.	CARTER, WASHINGTON	60,270
16.	COCKE, GREENE, HAWKINS, UNICOI	61,908
17.	CLAIBORNE, GRAINGER, HAMBLEN, HANCOCK, JEFFERSON, SEVIER	62,776
18.	BLOUNT, KNOX, LOUDEN	84,266
19.	ANDERSON, CAMBELL, UNION	58,067
20.	BRADLEY, McMINN, MEIGS, MONROE, POLK	59,873
21.	GRUNDY, HAMILTON, MARION, ROANE, RHEA, SEQUATCHIE	59079
22-33.	SHELBY, DAWSON, HAMILTON, KNOX	59,955

TENNESSEE

[fol. 33]

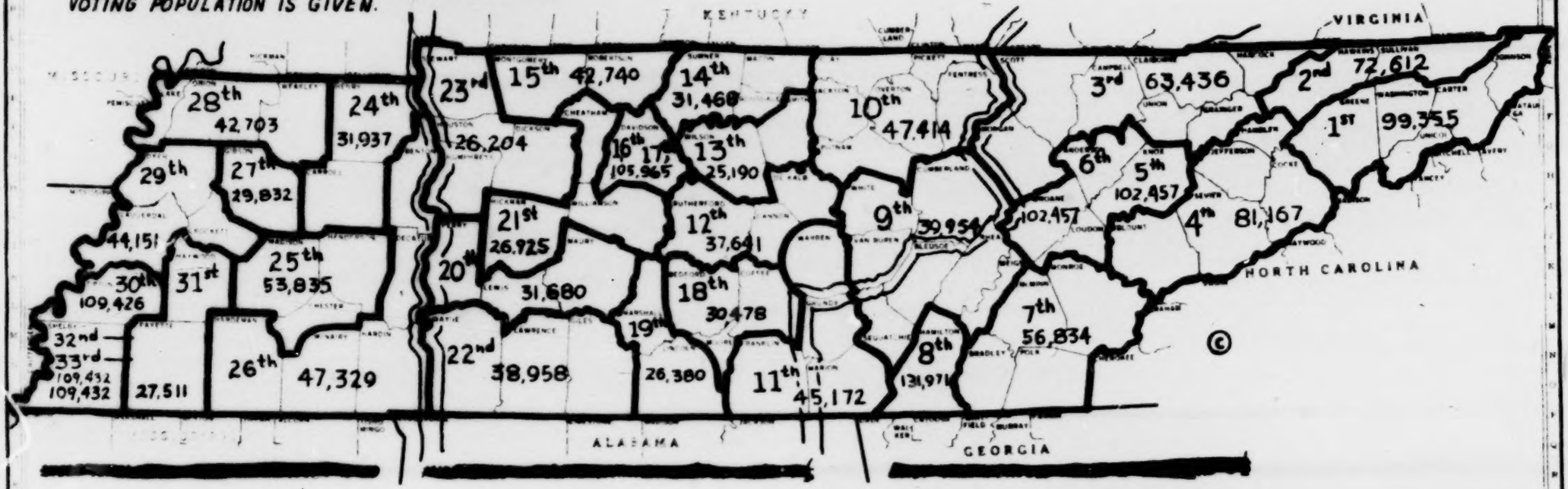
EXHIBIT "C" TO COMPLAINT

(See opposite)☞

SENATORIAL DISTRICTS VARY BETWEEN 131,971 MOST (8th DIST.) AND 25,190 LEAST (13th DIST.)

THE TOTAL NUMBER OF VOTERS IN TENNESSEE IS 1,978,548.
WE ELECT 33 SENATORS. 1,978,548 ÷ 33 = 59,956.
THEREFORE COUNTIES SHOULD BE GROUPED TOGETHER IN SENATORIAL DISTRICTS SO THAT EACH DISTRICT HAS APPROXIMATELY 59,956

SENATORIAL DISTRICTS ARE OUTLINED IN BARS
THE DISTRICTS ARE NUMBERED AND THE APPROXIMATE VOTING POPULATION IS GIVEN.



TENNESSEE COUNTIES:

	1970 Voting Population	1970 Voting Population		1970 Voting Population	1970 Voting Population		1970 Voting Population	1970 Voting Population		1970 Voting Population	1970 Voting Population
Anderson	4,000	33,000	Fentress	1,331	7,057	Lake	1,972	6,282	Rhea	3,485	8,887
Bedford	5,777	14,733	Franklin	4,000	14,207	Lauderdale	5,075	14,613	Roane	5,476	17,000
Benton	2,712	7,023	Gibson	8,400	28,533	Lawrence	3,165	15,067	Robertson	6,274	14,400
Bledsoe	1,400	4,118	Giles	7,365	15,985	Lewis	1,888	3,413	Rutherford	7,877	35,316
Blount	6,300	30,365	Grainger	3,576	7,135	Lincoln	6,200	15,000	Scott	2,378	6,417
Bradley	3,697	18,273	Greene	6,187	22,648	Loudon	2,687	13,284	Sequatchie	700	2,894
Campbell	3,976	17,477	Grundy	1,737	6,548	McMinn	4,278	18,347	Sevier	4,683	12,778
Cannon	2,781	5,341	Hamblen	2,987	14,000	McNairy	4,000	11,000	Shelby	68,000	303,246
Carroll	5,004	14,472	Hamilton	14,000	131,971	Macon	2,000	7,574	Smith	3,173	8,731
Carter	3,700	20,000	Hancock	2,274	4,710	Madison	6,700	37,200	Stewart	3,513	5,000
Cheatham	2,697	5,000	Hardeman	5,119	13,000	Marion	4,000	10,000	Sullivan	6,000	38,712
Chester	2,379	6,201	Hardin	4,267	8,577	Marshall	4,501	11,000	Sumner	6,000	30,160
Claiborne	4,500	12,700	Hawkins	5,100	16,000	Maury	11,000	32,000	Tipton	6,000	15,000
Clay	1,000	4,000	Haywood	5,447	13,000	Meigs	1,000	3,000	Trousdale	1,000	3,000
Cocke	4,973	13,573	Henderson	4,000	10,000	Monroe	4,000	12,000	Unicoi	3,000	8,787
Coffee	3,700	13,000	Henry	5,873	15,000	Montgomery	8,712	32,000	Union	3,000	6,000
Crockett	3,000	8,000	Hickman	3,001	7,000	Moore	1,000	2,000	Van Buren	700	2,000
Cumberland	3,007	8,000	Houston	1,000	3,000	Morgan	3,544	6,000	Warren	5,000	15,000
Davidson	17,000	311,000	Humphreys	3,000	8,000	Obion	7,173	18,000	Washington	5,000	38,000
Decatur	2,000	5,000	Jackson	3,170	6,710	Overton	3,000	8,000	Wayne	3,000	7,170
Dekalb	3,000	8,000	James	1,001		Perry	1,867	3,711	Weakley	7,000	18,000
Dickson	6,000	11,000	Jefferson	4,130	11,000	Pickett	1,138	3,000	White	3,118	8,344
Dyer	5,000	20,000	Johnson	2,311	6,000	Polk	3,079	7,000	Williamson	6,371	16,000
Fayette	6,100	13,577	Knox	15,000	100,000	Putnam	3,000	17,000	Wilson	6,000	15,000

TENNESSEE

[fol. 34]

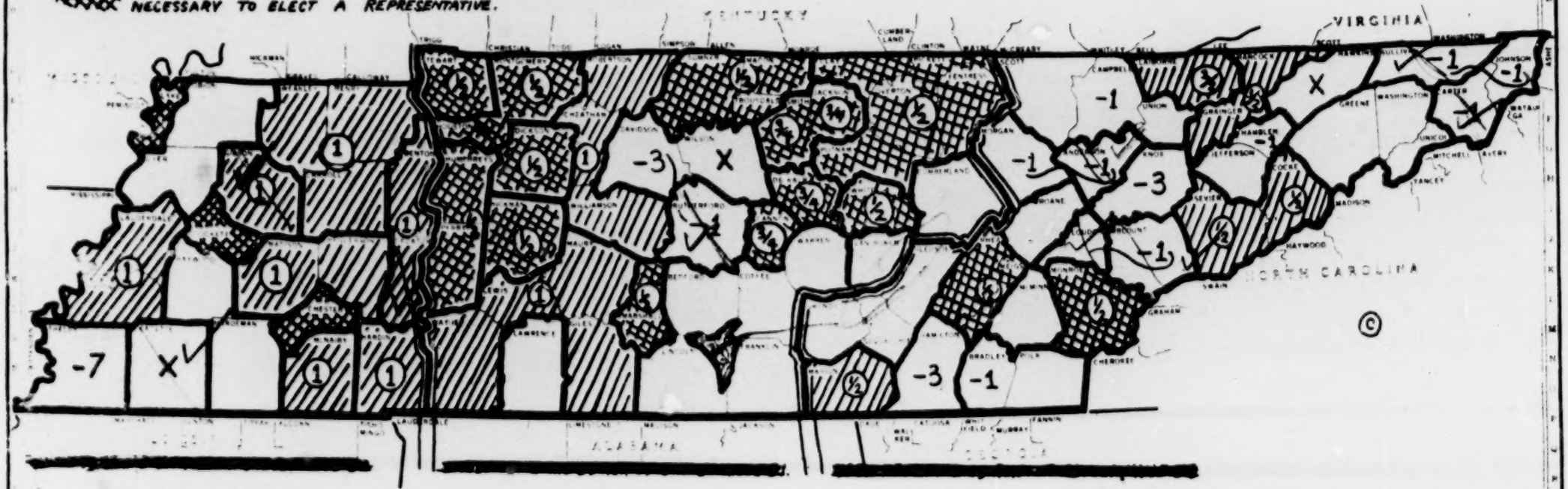
EXHIBIT "D" TO COMPLAINT

(See opposite)☞

DISTRIBUTION OF THE 99 HOUSE SEATS UNDER THE ACT OF 1901

THE NUMBER OF VOTERS IN THE REPRESENTATIVE DISTRICTS VARIES BETWEEN 2,340 AND 42,298

- INDICATES THE BOUNDARY BETWEEN THE 3 CONGRESSIONAL DISTRICTS OF EAST TENNESSEE, MIDDLE TENNESSEE, AND WEST TENNESSEE.
- COUNTIES LEFT BLANK HAVE APPROXIMATELY THE REPRESENTATION TO WHICH THEY ARE ENTITLED.
- (1) - INDICATES THE COUNTY OR FLOTERIAL DISTRICT HAS A REPRESENTATIVE TO WHICH IT IS NOT ENTITLED
- -1 - INDICATES THE NUMBER OF REPRESENTATIVES TO WHICH THE COUNTY OR FLOTERIAL DISTRICT IS UNJUSTLY DENIED.
- X - INDICATES THAT THE COUNTY SHOULD HAVE ONLY ONE SEPARATE REPRESENTATIVE AND NOT BE JOINED IN A FLOTERIAL DISTRICT.
- (½) (¼) - INDICATES THE COUNTY HAS ONLY ½ OR ¼ OF THE POPULATION NECESSARY TO ELECT A REPRESENTATIVE.



THE TOTAL NUMBER OF VOTES IN TENNESSEE IS 1,978,548
WE ELECT 99 REPRESENTATIVES, 1,978,548 ÷ 99 = 19,985

THEREFORE COUNTIES SHOULD BE GROUPED TOGETHER IN REPRESENTATIVE DISTRICTS SO THAT EACH DISTRICT HAS APPROXIMATELY 19,985

TENNESSEE COUNTIES:

	1900 Voting Population	1900 Voting Population		1900 Voting Population	1900 Voting Population		1900 Voting Population	1900 Voting Population		1900 Voting Population	1900 Voting Population
Anderson	4,066	33,980	Bentress	1,331	7,067	Lake	1,972	6,253	Rhea	3,405	8,307
Bedford	5,777	14,732	Franklin	4,806	14,297	Lauderdale	5,075	14,413	Roane	5,470	17,636
Benton	2,712	7,052	Gibson	9,108	29,832	Lawrence	3,103	15,847	Robertson	6,274	16,456
Bledsoe	1,498	4,198	Giles	7,565	15,905	Lewis	866	3,413	Rutherford	7,877	25,316
Blount	4,359	30,353	Grainger	3,578	7,125	Lincoln	6,239	15,082	Scott	2,378	8,417
Bradley	3,687	18,273	Greene	6,957	23,649	Loudon	2,687	13,384	Sequatchie	766	2,904
Campbell	3,976	17,477	Grundy	1,737	6,540	McMinn	4,278	18,347	Sevier	4,434	12,783
Cannon	2,781	5,341	Hamblen	2,997	14,080	McNairy	4,080	11,801	Shelby	43,843	312,345
Carroll	5,804	16,472	Hamilton	16,892	131,971	Macon	2,858	7,974	Smith	4,372	8,731
Carter	3,748	23,303	Hancock	2,271	6,710	Madison	8,756	37,240	Stewart	3,512	5,258
Cheatham	2,467	5,263	Hardin	5,119	13,585	Marion	4,084	10,598	Sullivan	6,084	25,713
Chester	2,372	6,391	Hardin	4,357	9,577	Marshall	4,581	11,288	Sumner	6,784	28,143
Claiborne	3,559	12,789	Hawkins	5,192	18,900	Maury	11,288	34,556	Tipton	4,970	15,844
Clay	1,853	4,528	Haywood	5,417	13,804	Meigs	1,804	3,639	Trousdale	1,482	3,381
Cocke	4,072	12,572	Henderson	4,050	10,199	Monroe	4,965	12,884	Unicoi	1,239	8,787
Coffee	3,720	13,008	Henry	5,873	15,685	Montgomery	8,712	28,284	Union	2,841	4,889
Crockett	3,568	9,678	Hickman	3,891	7,588	Moore	1,333	2,340	Van Buren	700	2,089
Cumberland	2,237	9,565	Houston	1,545	3,044	Morgan	2,544	8,308	Warren	5,804	13,337
Davidson	17,998	211,930	Humphreys	3,263	8,588	Obion	7,173	18,434	Washington	5,498	26,387
Decatur	2,456	5,543	Jackson	3,178	8,719	Overton	2,925	8,474	Wayne	2,974	7,176
Dekalb	3,856	8,984	James	1,281		Perry	1,867	3,711	Weakley	7,882	18,697
Dickson	4,402	11,284	Jefferson	4,130	11,350	Pickett	1,135	2,585	White	3,118	8,344
Dyer	5,895	20,062	Johnson	2,211	8,649	Polk	2,879	7,330	Williamson	6,371	14,884
Fayette	8,180	13,577	Knox	19,048	140,559	Putnam	3,879	17,071	Wilson	6,550	16,458

[fol. 35]

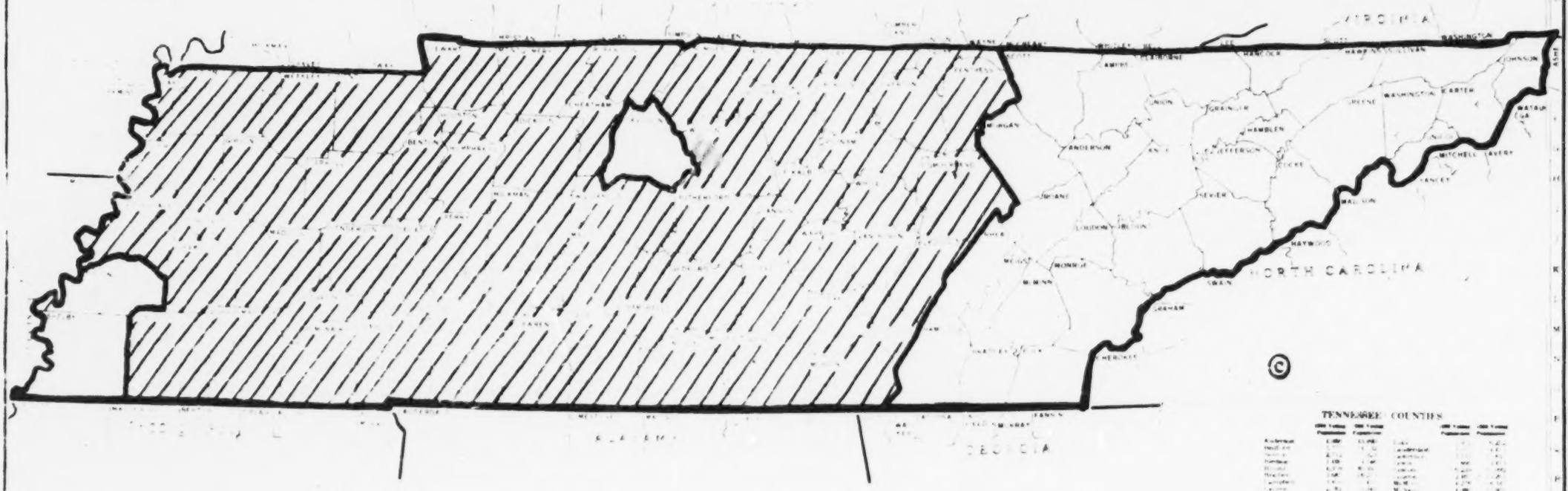
EXHIBIT "E" TO COMPLAINT

(See opposite)☞

IN TENNESSEE MINORITY RULES

SHADED COUNTIES HAVE BUT 37% OF THE POPULATION
AND ELECT 20 OF THE 33 MEMBERS OF THE SENATE

63% OF THE VOTERS ELECT BUT 13 OF THE 33 SENATORS, 37% ELECT 20 SENATORS



©

TENNESSEE COUNTIES

[fol. 36]

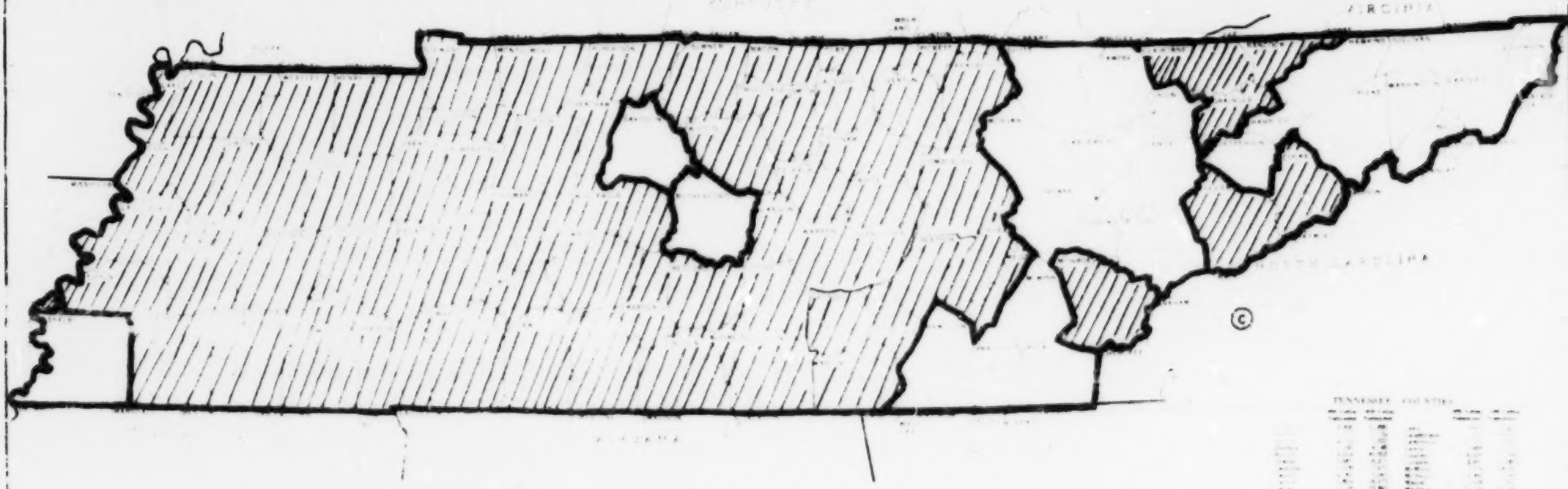
EXHIBIT "F" TO COMPLAINT

(See opposite)☞

IN TENNESSEE MINORITY RULES

SHADED COUNTIES HAVE BUT 40% OF THE POPULATION AND ELECT 63 OF THE 99 MEMBERS OF THE HOUSE OF REPRESENTATIVES

60% OF THE VOTERS OF TENNESSEE ELECT BUT 36 OF THE 99 MEMBERS



JUST OVER 60% OF THE VOTERS OF TENNESSEE RESIDE IN THE UNSHADED AREA AND ELECT BUT 36% OF THE SEATS OF THE HOUSE OF REPRESENTATIVES

[fol. 37]

EXHIBIT "G" TO COMPLAINT

(H.B. 760)
S.B. 598

A BILL TO BE ENTITLED: AN ACT TO REAPPORTION THE MEMBERSHIP OF THE HOUSE OF REPRESENTATIVES AND SENATE OF TENNESSEE IN THE MANNER PROVIDED IN THE CONSTITUTION OF THE STATE OF TENNESSEE BY AMENDING SECTIONS 3-101, 3-102, 3-103, 3-104, 3-105, 3-106, AND 3-107 OF CHAPTER 1 OF TITLE 3 OF THE TENNESSEE CODE, ANNOTATED, EFFECTIVE JANUARY 1, 1956.

Section 1. BE IT ENACTED by the General Assembly of the State of Tennessee that Sections 3-101, 3-102, 3-103, 3-104, 3-105, 3-106, and 3-107, as amended, of Chapter 1 of Title 3 of the Code of Tennessee, annotated, be amended so as to read as follows:

3-101. The general assembly of the State of Tennessee shall be composed of thirty-three (33) senators and ninety-nine (99) representatives, to be apportioned among the qualified voters of the state as follows: Until the next enumeration and apportionment of voters, each of the following counties shall elect one (1) representative, to-wit: Anderson, Bedford, Blount, Bradley, Campbell, Carroll, Carter, Coffee, Dyer, Fayette, Franklin, Gibson, Giles, Greene, Hamblin, Hardeman, Hawkins, Haywood, Henry, Lauderdale, Lawrence, Lincoln, Madison, Maury, McMinn, Montgomery, Obion, Putnam, Roane, Robertson, Rutherford, Sumner, Tipton, Warren, Washington, Weakley, Williamson and Wilson.

3-102. The following county shall elect two (2) representatives, to-wit: Sullivan.

3-103. The following counties shall elect six (6) representatives each, to-wit: Knox and Hamilton.

3-104. Davidson County shall elect nine (9) representatives.

3-105. Shelby County shall elect fourteen (14) representatives.

[fol. 38] 3-106. The following counties jointly shall elect one (1) representative, as follows, to-wit:

First district	Johnson and Sullivan
Second district	Carter and Washington
Third district	Cocke, Greene and Unicoi
Fourth district	Grainger and Jefferson
Fifth district	Claibourne, Hancock and Union
Sixth district	Knox and Sevier
Seventh district	Anderson and Scott
Eighth district	Blount and Loudon
Ninth district	Monroe and Polk
Tenth district	Grundy, Marion and Sequatchie
Eleventh district	Fentress, Morgan and Cumberland
Twelfth district	Bledsoe, Hamilton, Meigs, Rhea and Van Buren
Thirteenth district	Clay, Jackson, Overton and Pickett
Fourteenth district	Macon, Smith, Sumner and Trousdale
Fifteenth district	Cannon, DeKalb and White
Sixteenth district	Davidson and Rutherford
Seventeenth district	Lewis, Marshall, Maury and Moore
Eighteenth district	Cheatham, Houston, Montgomery and Stewart
Nineteenth district	Dickson and Humphreys
Twentieth district	Hickman, Perry and Wayne
Twenty-first district	Benton, Decatur and Henderson
Twenty-second district	Hardin and McNairy
Twenty-third district	Chester and Madison
Twenty-fourth district	Crockett, Dyer, Gibson and Lake

3-107. Until the next enumeration and apportionment of voters, the following counties shall comprise the Senatorial district, and one senator shall be elected from each district, to-wit:

First district	Johnson and Sullivan
Second district	Carter and Washington
Third district	Cocke, Greene, Hawkins and Unicoi
Fourth district	Claibourne, Grainger, Hamblin, Hancock, Jefferson and Sevier
Fifth district	Knox
Sixth district	Knox
Seventh district	Knox, Blount, and Loudon
Eighth district	Bradley, McMinn, Meigs Monroe and Polk
Ninth district	Hamilton
Tenth district	Hamilton
Eleventh district	Hamilton, Grundy, Marion, Sequatchie, Rhea, and Roane
Twelfth district	Anderson, Campbell and Union
Thirteenth district	Fentress, Jackson, Morgan Overton, Putnam, Pickett, and Scott
Fourteenth district	Bledsoe, Coffee, Cumberland, DeKalb, Van Buren, Warren, and White

[fol. 39]

Fifteenth district	Clay, Macon, Robertson, Smith and Sumner
Sixteenth district	Davidson
Seventeenth district	Davidson
Eighteenth district	Davidson
Nineteenth district	Davidson, Cheatham, Trousdale, and Wilson
Twentieth district	Bedford, Cannon, Rutherford, and Williamson
Twenty-first district	Franklin, Giles, Lincoln, Marshall and Moore
Twenty-second district	Dickson, Houston, Humphreys, Montgomery, Perry and Stewart
Twenty-third district	Hickman, Lawrence, Lewis Maury and Wayne
Twenty-fourth district	Benton, Carroll, Decatur, Hardin, Henderson and McNairy

Twenty-fifth district	Crockett, Haywood and Madison
Twenty-sixth district	Gibson, Henry and Weakley
Twenty-seventh district	Dyer, Lake, Lauderdale and Obion
Twenty-eighth district	Shelby
Twenty-ninth district	Shelby
Thirtieth district	Shelby
Thirty-first district	Shelby
Thirty-second district	Shelby
Thirty-third district	Shelby, Chester, Fayette, Hardeman, and Tipton

Section 2. BE IT FURTHER ENACTED that the present representatives and senators elected to the present term of the legislature shall represent their respective counties and districts as constituted prior to this Act until the next general election of representatives and senators; and at the next general election for members of the General Assembly of Tennessee, and thereafter until changed by law, the representatives and senators elected shall represent, respectively, the counties and districts hereinabove provided for.

Section 3. BE IT FURTHER ENACTED that this Act shall take effect from and after its passage, the public welfare requiring it.

[fol. 40] I, L. B. Loser, Chief Clerk of the House of Representatives of the 81st General Assembly do hereby certify that this is a true copy of House Bill 760.

/s/ L. B. LOSER
Chief Clerk

[fol. 41]

TRANSCRIPT

OF

JOURNAL

OF

SENATE

OF

EIGHTY-FIRST GENERAL ASSEMBLY

OF

TENNESSEE

ON

SENATE BILL No. 598

[fol. 42] THURSDAY, MARCH 5, 1959

SIXTIETH DAY

The Senate met at 10:00 A. M. and was called to order by Mr. Speaker Baird.

The proceedings were opened with prayer by Dr. James C. Blackwell, Pastor, Church of Christ of Centerville, Tennessee.

On motion, the roll call was dispensed with.

On motion, the reading of the Journal was dispensed with.

INTRODUCTION OF BILLS

By. Messrs. Mitchell (of Shelby), Cobb and Hughes, Senate Bill No. 598—To reapportion Tennessee General Assembly.

Passed first reading.

[fol. 43] FRIDAY, MARCH 6, 1959

SIXTY-FIRST DAY

The Senate met at 9:00 A. M. and was called to order by Mr. Speaker Baird.

The proceedings were opened with prayer by Mr. Speaker Baird.

On motion, the roll call was dispensed with.

On motion, the reading of the Journal was dispensed with.

SENATE BILLS ON SECOND READING

Senate Bill No. 598—To reapportion Tennessee General Assembly.

Passed ... ond reading and referred to Committee on Committees.

[fol. 44] THURSDAY, MARCH 12, 1959

SIXTY-SEVENTH DAY

The Senate met at 11:00 A. M. and was called to order by Mr. Speaker Baird.

The proceedings were opened with prayer by Reverend William B. Grannis, Pastor, St. Augustine Church of Chattanooga, Tennessee.

On motion, the roll call was dispensed with.

On motion, the reading of the Journal was dispensed with.

REPORT OF SELECT COMMITTEE

Mr. Speaker: Your Steering Committee begs leave to report that we have met and set the following bill on the calendar for Friday, March 13, 1959, Senate Bill No. 598.

Haynes, Chairman.

[fol. 45] TUESDAY, MARCH 17, 1959

SEVENTY-SECOND DAY

The Senate met at 10:00 A. M. and was called to order by Mr. Speaker Baird.

The proceedings were opened with prayer by Father Paul Trainer, Pastor, Holy Rosary Catholic Church of Donelson, Tennessee.

On motion, the roll call was dispensed with.

On motion, the reading of the Journal was dispensed with.

SENATE BILLS ON THIRD READING

Senate Bill No. 598—To reapportion Tennessee General Assembly.

Mr. Mitchell (of Shelby) moved for the previous question on Senate Bill No. 598, which motion prevailed by the following vote:

Ayes	27
Noes	0

Senators voting aye were: Messrs. Blackwell, Bockman, Boyers, Cobb, Coulter, Dement, Doggett, Eblen, Fulton, Glover, Guffey, Haynes, Hughes, Knippers, Larkin, McGrath, Mitchell (of Overton), Mitchell (of Shelby), Moore, Oakes, O'Brien, Padgett, Peters, Robinson, Sipes, Wilder and Mr. Speaker Baird—27.

Thereupon, Senate Bill No. 598 failed for the lack of a constitutional majority by the following vote:

Ayes	13
Noes	20

Senators voting Aye were: Messrs. Cash, Cobb, Coulter, Eblen, Fulton, Guffey, Hughes, McGrath, Mitchell (of Shelby), Murray, Oakes, Peters and Robinson—13.

Senators voting no were: Messrs. Blackwell, Bockman, Boyers, Dement, Dennis, Doggett, Glover, Haynes, Hunt, Kelley, Knippers, Larkin, McLemore, Mitchell (of Overton), Moore, O'Brien, Padgett, Sipes, Wilder and Mr. Speaker Baird.—20

[fol. 46] CERTIFICATE

I, John W. Cooke, Jr., Chief Clerk of the Senate of the Eighty-first General Assembly of the State of Tennessee, do hereby certify that the foregoing is a full, true and complete transcript of the proceedings of the Senate of the Eighty-first General Assembly, insofar as it pertains to the introduction and consideration of Senate Bill No. 598.

This, the 14th day of April, 1959.

JOHN W. COOKE, JR.
John W. Cooke, Jr., Chief Clerk
Senate

[fol. 47]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

SUMMONS AND RETURN

To the above named Defendants: Joe C. Carr, State Capitol, Nashville, Tennessee, and George H. McCanless, Supreme Court Bldg., Nashville, Tenn.

You are hereby summoned and required to serve upon Hon. Denney, Leftwich & Osborn, Attorneys at Law, Nashville Trust Building, Nashville 3, Tennessee; Hon. Hobart F. Atkins, 410 Cumberland Ave., South West, Knoxville, Tennessee; Hon. Chandler, Manire and Chandler, Home Federal Building, Memphis 3, Tennessee, plaintiffs' attorneys, whose addresses are listed herein, an answer to the complaint which is herewith served upon you, within Twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

John O. Anderson, Clerk of Court, Frank Williams, Deputy Clerk.

Date: May 18, 1959.

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 47a]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 25 day of May, 1959, I received this summons and served it together with the complaint herein as follows:

By delivering a copy thereof to Joe C. Carr, at His Office, Nash., Tenn.

By delivering a copy thereof to George H. McCanless, at His office, Nash., Tenn. both on May 25, 1959

[Stamp—Filed June 3, 1959—John O. Anderson, Clerk. By Frank Williams, D. C.]

Herbert E. Patrick, United States Marshal. By Jack M. Irwin, Deputy United States Marshal.

MARSHAL'S FEES

Travel 2 mi.	$ .20
Service 2 Fees	4.00
Billed	4.20

[fol. 48]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

SUMMONS AND RETURN

To the above named Defendant: JERRY McDONALD, c/o Secretary of State's Office, State Capitol Building, Nashville, Tennessee.

Hon. Denney, Leftwich & Osborn, Nashville Trust Building, Nashville 3, Tennessee; Hon. Hobart F. Atkins, 410 Cumberland Ave., South West, Knoxville, Tennessee; Hon. Chandler, Manire and Chandler, Home Federal Building, Memphis 3, Tennessee, plaintiffs' attorneys, whose addresses are listed herein, an answer to the complaint which is herewith served upon you, within Twenty (20) days after service of this summons upon you, exclusive of the day of

service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

John O. Anderson, Clerk of Court, Frank Williams, Deputy Clerk.

Date: May 18, 1959.

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 48a]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 25 day of May, 1959, I received this summons and served it together with the complaint herein as follows:

By delivering a copy thereof to Jerry McDonald, at His office, Nash., Tenn. on May 25, 1959

[Stamp—Filed June 3, 1959—John O. Anderson, Clerk, By Frank Williams, D. C.]

Herbert E. Patrick, United States Marshal, By Jack M. Irwin, Deputy United States Marshal.

MARSHAL'S FEES

Travel.....	$.....
Service Fees	2.00
Billed	2.00

[fol. 49]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

SUMMONS AND RETURN

To the above named Defendant: DR. SAM COWARD, Livingston, Tennessee:

You are hereby summoned and required to serve upon Hon. Denney, Leftwich & Osborn, Attorneys at Law, Nashville Trust Building, Nashville 3, Tennessee; Hon. Hobart F. Atkins, 410 Cumberland Ave., South West, Knoxville, Tennessee; Hon. Chandler, Manire and Chandler, Home Federal Building, Memphis 3, Tennessee, plaintiffs' attorneys, whose addresses are listed herein, an answer to the complaint which is herewith served upon you, within Twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

John O. Anderson, Clerk of Court, Frank Williams, Deputy Clerk.

Date: May 18, 1959.

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 49a]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 19th day of May, 1959, I received this summons and served it together with the complaint herein as follows:

By leaving copy of summons and copy of complaint with Dr. Sam Coward at his home Livingston, Tennessee

This May 19, 1959

[Stamp—Filed May 25, 1959—John O. Anderson, Clerk, By Frank Williams, D. C.]

Herbert E. Patrick, United States Marshal, By Willie W. Beaty, Deputy United States Marshal.

MARSHAL'S FEES

Travel 202 mi.	$ 20.20
Service.....	2.00
	22.20
Billed	22.20

[fol. 50]

[Stamp—Received May 20, 1959—U. S. Marshal, Memphis, Tenn.]

IN UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

SUMMONS AND RETURN

To the above named Defendant: JAMES ALEXANDER, McKenzie, Tennessee:

You are hereby summoned and required to serve upon Hon. Denney, Leftwich & Osborn, Attorneys at Law, Nashville Trust Building, Nashville 3, Tennessee; Hon. Hobart F. Atkins, 410 Cumberland Ave., South West, Knoxville, Tennessee; Hon. Chandler, Manire and Chandler, Home Federal Building, Memphis 3, Tennessee, plaintiffs' attorneys, whose addresses are listed herein, an answer to the complaint which is herewith served upon you, within Twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

John O. Anderson, Clerk of Court, Frank Williams, Deputy Clerk.

Date: May 18, 1959.

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 50a]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 25th day of May, 1959, I received this summons and served it together with the complaint herein as follows:

By serving Mrs. James Alexander—who accepted service for her husband, James Alexander, who was out of town—and leaving with her copies of complaint and summons on the 26th day of May, 1959.

[Stamp—Filed June 3, 1959—John O. Anderson, Clerk, By Frank Williams, D. C.]

John T. Williams, United States Marshal, By Ira W. Helm, Deputy United States Marshal.

MARSHAL'S FEES

Travel.....	$ 9.00	(90 miles at 10¢)
Service.....	2.00	
Billed	$ 11.00	

[fol. 51]

[Stamp—Received—U. S. Marshal, Eastern Dist. of Tenn. —May 19, 1959]

IN UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

SUMMONS AND RETURN

To the above named Defendant: HUBERT BROOKS, Johnson City, Tennessee:

You are hereby summoned and required to serve upon Hon. Denney, Leftwich & Osborn, Nashville Trust Building, Nashville 3, Tennessee; Hon. Hobart F. Atkins, 410 Cum-

berland Ave., South West, Knoxville, Tennessee; Hon. Chandler, Manire and Chandler, Home Federal Building, Memphis 3, Tennessee, plaintiffs' attorneys, whose addresses are listed herein, an answer to the complaint which is herewith served upon you, within Twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

John O. Anderson, Clerk of Court, Frank Williams, Deputy Clerk.

Date: May 18, 1959.

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 51a]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 19th day of May, 1959, at Knoxville, Tennessee I received this summons and served it together with the complaint herein as follows:

By handing to and leaving with Mr. Hubert Brooks at 309 W. Watauga Ave., Johnson City, Tennessee a copy of the summons and complaint on June 11, 1959.

[Stamp—Filed June 15, 1959—John O. Anderson, Clerk, By Frank Williams, D. C.]

Frank Quarles, United States Marshal, By Joseph E. Farmer, Deputy United States Marshal.

MARSHAL'S FEES

Travel.....	$ 20.00
Service.....	$ 2.00
	$ 22.00

[fol. 52]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

MOTION OF JOE C. CARR, ET AL. TO DISMISS ACTION
—Filed June 8, 1959

The defendants, Joe C. Carr, Secretary of State of the State of Tennessee, George F. McCanless, Attorney General of Tennessee, Jerry McDonald, Coordinator of Elections, and Dr. Sam Coward, and James Alexander, two members of the State Board of Elections, move the Court as follows:

1. To dismiss the action because the Court lacks jurisdiction over the subject matter.

2. To dismiss the action because the complaint fails to state a claim upon which relief can be granted.

[fol. 53] 3. To dismiss the action because of failure to join indispensable parties.

Milton P. Rice, Assistant Attorney General, Jack Wilson, Assistant Attorney General, James M. Glasgow, Assistant Attorney General, Allison B. Humphreys, Solicitor General, Attorneys for defendants, 401 Seventh Avenue North, Nashville, Tennessee.

Certificate of Service (omitted in printing).

[fol. 54]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

MOTION OF HUBERT BROOKS TO DISMISS THE ACTION
—Filed June 12, 1959

Defendant Hubert Brooks, a member of the State Board of Elections, adopts the motion of the other defendants to the action and moves the Court:

1. To dismiss the action because the Court lacks jurisdiction over the subject matter.

2. To dismiss the action because the complaint fails to state a claim upon which relief can be granted.

3. To dismiss the action because of failure to join indispensable parties.

Milton P. Rice, Assistant Attorney General, James M. Glasgow, Assistant Attorney General, Jack Wilson, Assistant Attorney General, Allison B. Humphreys, Solicitor General, Attorneys for defendants.

[fol. 55] Certificate of Service (omitted in printing).

[fol. 56]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

MOTION OF JOE C. CARR, ET AL. TO DISMISS THE ACTION WITHOUT ASSEMBLING A THREE-JUDGE COURT
—Filed June 17, 1959

Come the defendants, Joe C. Carr, Secretary of State of the State of Tennessee, George F. McCanless, Attorney General of Tennessee, Jerry McDonald, Coordinator of Elections, and Dr. Sam Coward, James Alexander and Hubert Brooks, members of the State Board of Elections, not waiving their motion to dismiss heretofore filed but relying thereon, and move the Court as follows:

To dismiss the action without assembling a three-judge court upon the ground the action does not raise a substantial federal question.

Milton P. Rice, Assistant Attorney General, James M. Glasgow, Assistant Attorney General, Jack Wilson, Assistant Attorney General, Allison B. Humphreys, Solicitor General, Attorneys for Defendants, 401 Seventh Avenue North, Nashville 3, Tennessee.

[fol. 57] Certificate of Service (omitted in printing).

[fol. 58]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

AFFIDAVIT OF JAMES M. GLASGOW AS TO JURISDICTIONAL PAPERS FILED IN SUPREME COURT OF THE UNITED STATES IN CASE OF KIDD, ET AL. V. MCCANLESS, NO. 469 OCTOBER TERM 1956—Filed July 6, 1959

I, James M. Glasgow, Attorney at Law, 401 Seventh Avenue North, Supreme Court Building, Nashville, Tennessee, being duly sworn, depose as follows:

That I was counsel of rec . in the case styled Gates Kidd, et al., Complainants-Appellants, v. George F. McCanless, Attorney General, Defendant-Appellee, in the Chancery Court at Nashville, in the Supreme Court of Tennessee, and in the Supreme Court of the United States, and that the Jurisdictional Statement and the Statement in Opposition to Appellants' Statement of Jurisdiction and Motion to Dismiss, which are being tendered to the Court for consideration in connection with the Motion to Dismiss without assembling a three-judge court, are true, accurate, and exact duplicates of the Jurisdictional Statement and the Statement in Opposition, and the Motion [fol. 59] to Dismiss, filed in the Supreme Court of the United States in said case of Kidd v. McCanless.

Witness my hand this 2nd day of July, 1959.

James M. Glasgow

Subscribed and sworn to before me, this 2nd day of July, 1959.

Glenn E. Frazier, Notary Public. My Comm. Exp. 5/7/63.

[Notarial Seal]

• • • • • • •

[fol. 61]

ATTACHMENT TO AFFIDAVIT OF JAMES M. GLASGOW

IN THE SUPREME COURT OF THE UNITED STATES

No. 36651

IN THE SUPREME COURT OF THE
STATE OF TENNESSEE

GATES KIDD, ET AL., Appellants,

vs.

GEORGE F. McCANLESS, Appellee.

JURISDICTIONAL STATEMENT

May It Please The Court:

Reference to Report of Opinion in Court Below

Unofficial report of the opinion delivered by the Supreme Court of Tennessee in the above styled and numbered case is published in 292 S. W. 2d at page 40; Advance Sheet No. 1, 292 S. W. 2d, dated August 21, 1956. Said opinion and the opinion of the Supreme Court of Tennessee, denying appellants' petition to rehear, is appended hereto.

[fol. 62] Grounds on Which Jurisdiction is Invoked

I.

The proceeding is an appeal where is drawn in question the validity of a statute of the State of Tennessee on the ground that it is repugnant to the Constitution of the United States, the decision of the Supreme Court of Tennessee, from which appeal is had, being in favor of the validity of the Tennessee statute.

II.

The decree sought to be reviewed was made and entered by the Supreme Court of Tennessee on April 5, 1956. Order

denying appellants' petition for a rehearing was made and entered on June 8, 1956. Notice of appeal was filed in the Supreme Court of Tennessee on July 19, 1956.

III.

Section 1257, Title 28, U.S.C., subsection (2) permits review by the Supreme Court of the United States of a judgment or decree of the Supreme Court of Tennessee by appeal, in a case in which the validity of a state statute is questioned for its repugnancy to the Constitution of the United States and decision in favor of the validity of the questioned statute is rendered by the Supreme Court of Tennessee.

[fol. 63] IV.

The following cases are believed to sustain the jurisdiction of this Honorable Court:

1. *Snowden* v. *Hughes*, 321 U.S. 1
2. *McPherson* v. *Blacker*, 146 U.S. 1
3. *Nixon* v. *Herndon*, 273 U.S. 536
4. *Nixon* v. *Condra*, 286 U.S. 73
5. *Thomas* v. *Reid*, 142 Oklahoma 38, 285 Pacific 92
6. *Cook* v. *State*, 90 Tenn. 407, 116 S.W. 471
7. *Maynard* v. *Board of Canvassers*, 84 Michigan 228, 47 N.W. 756.
8. *Dyer* v. *Kanzuhisa Abe*, 138 F. Supp. 220.

V.

The validity of certain statutes of Tennessee is involved. Said statutes, sections 3-101–3-107, inclusive, Tennessee Code Annotated, are published in the Official Edition of the Tennessee Code Annotated in Volume 2, pages 186, 187 and 188 of said Code. Together, they provide for apportionment of seats in the General Assembly of Tennessee. Being lengthy, the texts of said statutes are set forth in the appendix hereto.

[fol. 64] Questions Presented by the Appeal

The Constitution of Tennessee requires the making of an enumeration of qualified voters and an apportionment of representatives and senators in the General Assembly every ten years. The representatives and senators of the General Assembly are to be "apportioned among the several counties or districts, according to the number of qualified voters in each." Acts of apportionment were enacted in 1871, 1881, 1891 and in 1901. No enumeration of voters was made in preparation for the passage of the apportionment act of 1901. According to the best evidence available, the United States census taken in 1900, pursuant to the act of Congress of March 3, 1899, 30 Stat. 1014, section 201, that apportionment provided by the act of 1901 did not fairly and equally apportion representatives and senators among the several counties and districts, discriminating against the counties in which appellants reside and favoring other counties with representation in the General Assembly to which their population would not entitle them. In the 55 years passing since enactment of said act of 1901, the various General Assemblies of the State of Tennessee have failed and refused to make other and further enumerations and to apportion the representatives and senators in the General Assembly among the counties and districts according to the qualified voters in each, defeating every act looking to reapportionment of the Legislature.

The apportionment act of 1901 continues to be enforced against appellants and other citizens of Tennessee.

[fol. 65] When enacted, said apportionment act of 1901 required that a majority of the members of the Legislature be elected by less than a majority of the qualified voters of Tennessee. In the 55 years that have passed, continuing trends in population growth and shifts have so magnified the original inequality of representation that said apportionment act now requires that a majority of the members of the Legislature be elected by the majority had in elections at which less than one-third (1/3) of the qualified voters of Tennessee may vote. Does enforcement of said apportionment act deny appellants equal protection of the laws and Constitution of Tennessee, in violation of the Constitution of the United States, Amendment Fourteen, section 1?

Statement of the Case

Appellants sued the election commissioners conducting elections in appellants' counties of residence and, relief by way of declaratory judgment being asked, as required by the laws of Tennessee, made appellee, Attorney General of Tennessee, a party defendant, alleging the invalidity of Chapter 122 of the Acts of the General Assembly of 1901 (codified as Sections 3-101–3-107, Tennessee Code Annotated). In their original bill appellants pleaded the provisions of the Constitution of Tennessee requiring that elections be free and equal, that qualified voters of the state are entitled to vote for members of the General Assembly, and requiring enumeration of the qualified voters every ten years and an apportionment of the number of representatives and senators among the several counties or districts of Tennessee according to the number of qualified voters in each. Appellants pleaded the terms and pro- [fol. 66] visions of Chapter 122 of the Acts of the General Assembly of 1901, apportioning the number of representatives and senators among the counties and districts, and the invalidity of said act of apportionment for lack of an enumeration of qualified voters and for apportionment of representatives and senators on some basis other than according to the qualified voters residing in the several counties and districts. In their original bill and the exhibits thereto, appellants alleged and demonstrated the inequality of representation provided in said act when originally enacted and as presently applied to the counties and districts of Tennessee. As shown in appellants' bill and exhibits, said act of apportionment did not admit of election of a majority of the members of the General Assembly by a majority of the qualified voters of Tennessee and, instead, required election of a majority of the members of the General Assembly by a minority of the qualified voters of Tennessee. Appellants' bill alleged the debasement of appellants' vote by virtue of the relative overpopulation of their respective districts and alleged the senatorial districts as fixed by said act of 1901 to have grossly unequal voting populations, said districts varying in population between 131,971 in the Eighth Senatorial District and 25,190 in the Thirteenth Senatorial District, as shown

by the United States census. Appellants alleged and their exhibits reflected the additional representation in the General Assembly of Tennessee to which their voting population would entitle them, and they pleaded the invalidity of said act of apportionment for its violation of the terms and provisions of the Constitution of Tennessee.

[fol. 67] Appellants, in section I of their original bill, alleged "that they are now denied the right to equal suffrage in free and equal elections, which right is granted them by the Constitution of the State of Tennessee, and the equal protection of the laws, as guaranteed by both the Constitution of the State of Tennessee and by the Fourteenth Amendment to the Constitution of the United States." In section VII, subsection 5, of their original bill appellants alleged the apportionment act of 1901 to be unconstitutional because

> "5. These complainants are further denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes."

Some defendants answered, admitting appellants' right to relief; appellee demurred to the bill. From a decree overruling the demurrer and declaring the act attacked to be unconstitutional and no longer in force and effect by reason of the passage of time, appellee appealed to the Supreme Court of Tennessee.

In brief and argument before the Supreme Court of Tennessee appellants urged the unconstitutionality of said Chapter 122 of the Acts of 1901, General Assembly of Tennessee, for its violation of the provisions of the Constitution of Tennessee and for its denial to appellants of equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 68] In setting forth the insistences made by appellants, the Supreme Court of Tennessee summarized as follows:

> ". . . By their bill they prayed, in addition to process and general relief, a declaratory judgment of the court declaring the Apportionment Act of 1901, as amended,

to be unconstitutional for the following reasons: (1) no census of qualified voters was made as required by Section 4 of Article II of the Constitution; (2) the Act was unconstitutional and discriminatory when enacted; (3) the Senate Joint Resolution adopted by the Legislature in 1901 was not followed when said Act was enacted by the General Assembly; (4) the Apportionment Act of 1901 became unconstitutional and obsolete in 1911 because a new enumeration and apportionment was not made in that year; and (5) because the three counties where the complainants reside and vote are now entitled to greater representation in the Legislature than is afforded them by said Act. The bill alleges and charges because of this last assigned reason the respective complainants who reside and vote in their respective counties are denied the right to equal franchise and suffrage. The bill further alleges in support of these charges that a minority of approximately 37% of the voting population of the State now elects and controls 20 of the 33 members of the Senate; that a minority of 40% of the voting population of the State now controls 63 of the 99 members of the House of Representatives. The bill alleges also that the defendants will continue to conduct elections for mem- [fol. 69] bers of the General Assembly according to said Act unless they are restrained by the court. * * *"

Ruling on the questions presented, the Supreme Court of Tennessee admitted the invalidity of but refused to enter a decree holding said Act unconstitutional, saying:

" . . . Under the allegations of the bill this Act was invalid at the time it was enacted, but the bill fails to allege the existence of a prior valid apportionment act to fall back upon. In that situation the authorities are practically unanimous in holding that a court will not declare such a statute invalid. In Fesler v. Brayton, 145 Ind. 71, 44 N.E. 37, 32 L.R.A. 578, the Court said that the effect of striking down an apportionment statute under those circumstances would be to destroy the State Government. See also State ex rel. Winnie v. Stoddard, 25 Nev. 452, 62 P. 237, 51 L.R.A. 229.

In State ex rel. Sullivan v. Schnitger, 16 Wyo. 479, 95 P. 698, at page 708, a number of cases are cited for the proposition that the court will not declare an apportionment act invalid unless there is a prior valid act on which they may fall back.

"We are therefore of the opinion that the Chancellor was in error in overruling the tenth ground of the Attorney General's demurrer. His decree is accordingly reversed, and the bill is dismissed at the cost of complainants."

[fol. 70] In overruling and reversing the Chancellor and holding that the act complained of is immune from attack since practical difficulties might be encountered if they should hold other than that the act is valid, the Supreme Court of Tennessee made a ruling of a nature to bring the case within the statutory provision believed to confer jurisdiction on this Court.

The Federal Question is Substantial

The discrimination between qualified voters of Tennessee made by said act of apportionment is without parallel in the United States. In the 38 states in which state supreme courts have been called upon to examine acts of apportionment, variations in voting populations of counties and districts were often but ten to twenty percent. Under said act of 1901 and its amendments, the qualified voter of Moore County, Tennessee, has 18 times as much representation in the House of Representatives of the Tennessee Legislature as does the qualified voter of Davidson County, Tennessee. The Constitution of the United States guarantees a republican form of government to the people of every state and the Constitution of Tennessee would not have been approved by the Congress of the United States if it had undertaken to negate the principle of majority rule, the foundation of republican systems of government.

Appellants' bill abundantly shows the invidious and purposeful discrimination prevailing in Tennessee; equal protection of the laws involves a reasonably equal share in the process of making laws. The ruling of the Supreme Court of Tennessee is that equal protection of the law may

be denied if the statute denying equal protection of the [fol. 71] laws would affect the law making body. Thus, that Court's ruling provides a vehicle whereby the Constitutional guarantee of a republican system of government may be circumvented and whereby an invidious and purposeful discrimination may be had between citizens of the same state.

> ". . . Where discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that discrimination relates to political rights," *Snowden* v. *Hughes*, 321 U.S. 1, 11.

The questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral arguments for their resolution, because:

1. A decree of unconstitutionality is not to be entered or withheld according to the balance of conveniences. The Constitution is to be itself applied equally, without fear or favor, according to the guarantees contained in it and not according to whether practical difficulties may attend its enforcement.

2. The Fourteenth Amendment to the Constitution of the United States and the equal protection clause contained in it addresses itself to every branch of state government, legislative, executive and judicial. The ruling of the Supreme Court of Tennessee specifies invidious and purposeful discrimination, but reverses and overrules a Chancellor granting relief and refuses entry of a decree of unconstitutionality, inasmuch as the legislative branch of the government of Tennessee is involved.

[fol. 72] 3. The effect of the ruling and holding of the Supreme Court of Tennessee is that the Constitutions of Tennessee and of the United States do not secure the purity of elections or the principle of majority rule to the qualified voters of a state. The ruling permits unequal elections and upholds a statute requiring rule of a minority.

4. The Act attacked constitutes a present invasion of rights guaranteed appellants by the Constitution of Tennessee and of the United States. Neither Constitution would

require of appellants a showing that a prior act of apportionment [the newest is 66 years old] would serve to give to appellants a reasonably equal share in the law making process and thus equal protection of the laws, now and in this time. To require this showing would be to require appellants to condone and compliment the purposeful, biased inaction through which minority rule is perpetuated in Tennessee.

> "The result by non-action has been a purposeful and systematic plan to discriminate against a geographic class of persons. It has been achieved as though a positive statute had been passed to accomplish the same purpose.
>
> "Biased inaction has had the same result as biased action. It is a denial of equal protection of the law."
>
> *Dyer* v. *Kanzuhisa Abe*, D. C. Hawaii, 138 F. Supp. 220.

[fol. 73] Conclusion

For the foregoing matters, it is believed that this Honorable Court may take jurisdiction of appellants' cause and correct the errors in same.

Respectfully submitted,

Z. T. Osborn, Jr., for Barksdale, Hudgins and Osborn, 1316 Nashville Trust Building, Nashville 3, Tennessee.

Hobart Atkins, 410 Cumberland Ave., S.W., Knoxville, Tenn.

[fol. 74]

IN THE SUPREME COURT OF THE UNITED STATES

No. 36651

IN THE SUPREME COURT OF THE STATE OF TENNESSEE

GATES KIDD, ET AL., Appellants,

vs.

GEORGE F. McCANLESS, Appellee.

APPENDIX

[fol. 75]

IN THE SUPREME COURT OF THE UNITED STATES

No. 36651

IN THE SUPREME COURT OF THE STATE OF TENNESSEE

GATES KIDD, ET AL., Appellants,

vs.

GEORGE F. McCANLESS, Appellee.

REHEARING DENIED

GATES KIDD, ET AL.,

vs.

GEORGE F. McCANLESS, Attorney General of the State of Tennessee, et al.

SUPREME COURT OF TENNESSEE

April 5, 1956

Rehearing Denied June 8, 1956

Knox Bigham, James M. Glasgow and Jack Wilson, Asst. Attys. Gen., for appellants.

Haynes Miller and Mayne Miller, and Kent Herrin, Johnson City, Peter Hampton, Elizabethton, Hobart F. Atkins, Knoxville, Maclin P. Davis, Jr., and Barksdale, Hudgins & Osborn, Nashville, for appellees.

SWEPSTON, Justice.

[fol. 76] This is an appeal by the Attorney General from a decree overruling certain grounds of appellants' demurrer to the original bill, and declaring that the legislation providing for the apportionment of Senators and Representatives in the General Assembly, the same being Chapter

122 of the Public Acts of 1901, as amended, now codified as Sections 3-101 et seq. of Tennessee Code Annotated, has expired and is no longer effective.

The ultimate question involved is obviously of great public importance, and we have given the same the study to which the question is entitled. Examination of the Chancellor's opinion discloses that he likewise gave the matter serious and extended study and consideration.

In the view that we take of the matter, however, it will not be necessary to state at length and in detail the various pleadings filed by the numerous parties involved in the litigation, nor will it be necessary to discuss the numerous questions of law raised by the demurrers and passed upon by the Chancellor.

The suit was filed on March 8, 1955, by Gates Kidd and four other voters and residents of Washington County, Tennessee, along with six voters and residents of Carter County, and two voters and residents of Davidson County, against the Attorney General of Tennessee, the Secretary of State, the members of the State Board of Elections, the members of the Republican State Primary Election Commission, the members of the Democratic State Primary Election Commission, the members of the Washington County Election Commission, the Carter County Election [fol. 77] Commission, and the Davidson County Election Commission. By their bill they prayed, in addition to process and general relief, a declaratory judgment of the court declaring the Apportionment Act of 1901, as amended, to be unconstitutional for the following reasons: (1) no census of qualified voters was made as required by Section 4 of Article II of the Constitution; (2) the Act was unconstitutional and discriminatory when enacted; (3) the Senate Joint Resolution adopted by the Legislature in 1901 was not followed when said Act was enacted by the General Assembly; (4) the Apportionment Act of 1901 became unconstitutional and obsolete in 1911 because a new enumeration and apportionment was not made in that year; and (5) because the three counties where the complainants reside and vote are now entitled to greater representation in the Legislature than is afforded them by said Act. The bill alleges and charges because of this last assigned reason the respective complainants who reside and vote in their

respective counties are denied the right to equal franchise and suffrage. The bill further alleges in support of these charges that a minority of approximately 37% of the voting population of the State now elects and controls 20 of the 33 members of the Senate; that a minority of 40% of the voting population of the State now controls 63 of the 99 members of the House of Representatives. The bill alleges also that the defendants will continue to conduct elections for members of the General Assembly according to said Act unless they are restrained by the court.

The bill seeks an injunction restraining the defendants from holding any election under said alleged unconstitutional Act either in 1956 or thereafter. In the alternative [fol. 78] the bill prays either (a) that a writ of mandamus issue ordering and compelling the defendants, State Board of Election, Democratic and Republican Primary Election Commissions, and the County Election Commissioners of Carter, Washington and Davidson Counties to prepare for a general election at large in 1956, wherein every qualified voter of the State would have an equal right to vote for every Representative and every Senator to serve in the 1957 General Assembly or any subsequent General Assembly, or (b) that by decree this Court mathematically reapportion the State of Tennessee and order the defendant Election Commissioners to prepare for and conduct the 1956 election of Representatives and Senators of the State in accordance with the decree mathematically reapportioning the State.

There was an answer and cross-bill filed by the Republican State Primary Election Commission and others seeking virtually the same relief as prayed for in the original bill.

The cross-bill was dismissed on demurrer of some of the defendants and on motion as to others.

The Attorney General filed a demurrer setting out 14 grounds, some of which the court sustained, and some of which were overruled.

The Chancellor correctly denied the relief prayed for under the alternative prayers (a) and (b), supra. There is no provision of law for election of our General Assembly by an election at large over the State. The citation of

Smiley v. Holm, 285 U.S. 355, 52 S.Ct. 397, 76 L.Ed. 795, is not in point, because the case dealt with the election of [fol. 79] members of the National House of Representatives which is controlled by Article I, Section 2, under which an election at large is permitted in the absence of a redistricting act.

Quite clearly, also, the Governor has no power to reapportion the State for election of our General Assembly.

The Chancellor entertained the bill, however, for the purpose of rendering a declaratory judgment and thereby overruled the tenth and fourteenth grounds of the Attorney General's demurrer which are respectively that the court will not declare a statute unconstitutional if the result will be to disrupt the orderly processes of government, and that the present legislation providing for the apportionment of the Senators and Representatives in the General Assembly is not unconstitutional for any of the reasons stated in the bill.

In his opinion the Chancellor said:

> "The Attorney-General has contended in the 10th ground of demurrer that the Court ought not to declare the law in question invalid or unconstitutional because chaos and confusion would result. But how is this so?
>
> "This Court is entitled to presume and will presume that when it has exercised its constitutional duty in this proceeding to declare that there is no authority for the holding of an election for the members of the General Assembly in 1956, that the other two coordinate branches of our government will likewise exercise their [fol. 80] duty under the Constitution to provide orderly government for the people within their power to do so; that the Governor, therefore, will exercise his constitutional power and duty to call the Legislature into special session for the purpose of making an enumeration and reapportionment as required by the Constitution; that the Legislature, in turn, its power and duty having been declared herein, will exercise and perform the same by making a proper enumeration and apportionment. That the present General As-

sembly may thus act as a *de facto* body, the Court entertains not the slightest doubt. See State v. Cunningham, supra [81 Wis. 440, 51 N.W. 724, 15 L.R.A. 561], wherein the Court pointed out that the last legislature selected under the invalid act might lawfully be reassembled to pass a valid act of apportionment. The *de facto* doctrine is well established in Tennessee, particularly in matters involving public policy and necessity. Beaver v. Hall, 142 Tenn. 416, 433, 217 S.W. 649.

"That such result will not occur, is inconceivable to this Court.

"For these reasons, the Court is of the opinion that the injunctive relief prayed in the bill to restrain the defendants from holding or conducting an election for members of the General Assembly in 1956, or subsequently, is prematurely sought and will be denied. See Maryland Theatrical Corp., v. Brennan, 180 Md. 377, 24 A.2d 911."

[fol. 81] [1] Thus it is apparent that the Chancellor correctly recognized, as he had already done theretofore in the opinion, that the courts have no power to compel either the legislative or the executive department to perform the duties committed exclusively to their respective domains by the fundamental law. He simply made a declaration that we have no valid reapportionment statute and then fell back on the *de facto* doctrine in order to avoid the otherwise necessary conclusion that by reason of the invalidity of the Act of 1901 we would no longer have any lawfully elected members of the General Assembly.

[2] Pretermitting all other questions discussed by the Chancellor and especially the question of whether he had jurisdiction under the declaratory judgment statute, we think the Chancellor was in error in applying the *de facto* doctrine. In the first place the case of Beaver v. Hall, cited by the Chancellor, in which the *de facto* doctrine is dealt with, the syllabus and the authorities discussed in the opinion show that there can be a *de facto* body or office only until there has been a judicial determination of the invalidity of same.

[3] In Ridout v. State, 161 Tenn. 248, at page 270, 30 S.W.2d 255, 71 A.L.R. 830, there are set out those instances where the doctrine is not applied. One instance is where either the person or body is not acting in good faith and the public knows of the want of authority there can be no *de facto* doctrine. 43 Am.Jur. 241, Section 495, in which it is said the general rule is that the acts of a *de facto* officer are valid as to third persons and as to the public only until his title to the office is adjudged insufficient, etc. Id., 244, Section 496.

[fol. 82] Secondly, State v. Cunningham, relied on by the Chancellor, is to be found in 81 Wis. 440, 51 N.W. 724, 15 L.R.A. 561. That case applied the *de facto* doctrine exactly as the Chancellor has applied it here. However, in a much later case, State ex rel. Martin v. Zimmerman, 249 Wis. 101, 23 N.W.2d 610, that doctrine was rejected in the following language, at page 612 of the N.W. Reporter:

> "The reasons advanced in the argument made by the learned attorney general are inconclusive and if followed to their logical conclusion, would bring the government of the state into a legal cul-de-sac because of the elimination for the time being at least, of one of the equal co-ordinate branches of our government. It would destroy our constitutional equilibrium. As suggested, if ch. 27, Special Session, 1931 had become void and legislators elected since 1941 were not chosen from legal and constitutional legislative districts, then would we have a qualified and lawful body to enact a valid reapportionment statute? It is unnecessary, because of the validity of ch. 27, to rely on a theory that legislators elected to office from unconstitutional or non-existent districts, have by some doctrine of de facto officialdom based on de facto legislative districts, a right to exercise the important duties necessarily entering into a fair and just apportionment. Once it is determined that the present incumbents are not de jure officers, they have no color of authority and could not serve as de facto officers. 46 C.J. § 367, p. 1054; Ekern v. McGovern, 1913, 154 Wis. 157, 142 N.W. 595, 46 L.R.A.N.S., 796."

[fol. 83] [4] It seems obvious and we therefore hold that if the Act of 1901 is to be declared unconstitutional, then the *de facto* doctrine cannot be applied to maintain the present members of the General Assembly in office. If the Chancellor is correct in holding that this statute has expired by the passage of the decade following its enactment then for the same reason all prior apportionment acts have expired by a like lapse of time and are non-existent. Therefore we would not only have any existing members of the General Assembly but we would have no apportionment act whatever under which a new election could be held for the election of members to the General Assembly.

It seems hardly necessary to comment on the fact that the Constitution limits the number of Representatives to 99 and the number of Senators to 33, to be apportioned by the Legislature according to the number of voters in the various Districts throughout the State.

The ultimate result of holding this Act unconstitutional by reason of the lapse of time would be to deprive us of the present Legislature and the means of electing a new one and ultimately bring about the destruction of the State itself.

Under the allegations of the bill this Act was invalid at the time it was enacted, but the bill fails to allege the existence of a prior valid apportionment act to fall back upon. In that situation the authorities are practically unanimous in holding that a court will not declare such a statute invalid. In Fesler v. Brayton, 145 Ind. 71, 44 N.E. 37, 32 L.R.A. 578, the Court said that the effect of striking down an apportionment statute under those circumstances would be to destroy the State Government. See also State ex rel. [fol. 84] Winnie v. Stoddard, 25 Nev. 452, 62 P. 237, 51 L.R.A. 229. In State ex rel. Sullivan v. Schnitger, 16 Wyo. 479, 95 P. 698, at page 708, a number of cases are cited for the proposition that the court will not declare an apportionment act invalid unless there is a prior valid act on which they may fall back.

We are therefore of the opinion that the Chancellor was in error in overruling the tenth ground of the Attorney General's demurrer. His decree is accordingly reversed, and the bill is dismissed at the cost of complainants.

[fol. 85] OPINION ON PETITION TO REHEAR

(Filed June 8, 1956)

DAVID S. LANSDEN, Clerk,
Supreme Court of Tennessee

GATES KIDD, et al.,

—v.—

GEORGE F. MCCANLESS,
Attorney General of the
State of Tennessee, et al.

DAVIDSON EQUITY

Hon. Thomas Wardlaw
Steele, Chancellor

For the Appellees:

Hayes Miller & Mayne Miller
Johnson City, Tennessee;

Kent Herrin
Johnson City, Tennessee;

Peter Hampton
Elizabethton, Tennessee;

Hobart Atkins
Knoxville, Tennessee;

Maclin P. Davis
Nashville, Tennessee;

Barksdale, Hudgins &
Osborn
Nashville, Tennessee.

For the Appellants:

Knox Bigham
James M. Glasgow
Jack Wilson
Assistant Attorneys
General
Supreme Court Building
Nashville 3, Tennessee.

Gates Kidd and others have filed their petition to rehear. The gist of same is that they assert it was unnecessary for the Chancellor to rely upon the defacto doctrine because it is alleged that the Legislature owes its exis-[fol. 86] tence to the Constitution and secondly, that the original bill did not challenge the right of any person presently a member of the General Assembly to continue to serve as a member of that body, leaving the inference to be

drawn that the Court in its original opinion decided questions not raised by the pleadings.

It should be perfectly obvious to any lawyer that, while the Legislature exists as a department of government by virtue of the Constitution, yet the members individually hold office by virtue of election held pursuant to law, especially apportionment statutes. Hence, as we held in the original opinion, if the last reapportionment act be held invalid, then the present members of the General Assembly have not been dejure officers but only defacto and under well established authority could no longer be even defacto officers after a judicial decision declaring the statute invalid.

It is also well understood among the legal fraternity that courts do not and should not indulge in the mental exercise of deciding non-determinative points but should decide only such matter or matters as are determinative of the lawsuit. The 10th ground of the demurrer raised a question which the Court considered to be determinative of the whole controversy and we accordingly confine the decision to that one point. It comes as no surprise that petitioners do not agree with the opinion of the Court but that alone is not a sufficient reason for granting a rehearing. With due deference to counsel we must therefore overrule the petition to rehear.

/s/ John E. Swepston
John E. Swepston, J.

[fol. 87] The Statute Attacked

3-101. *Composition—Counties electing one representative each.*—The general assembly of the state of Tennessee shall be composed of thirty-three (33) senators and ninety-nine (99) representatives, to be apportioned among the qualified voters of the state as follows: Until the next enumeration and apportionment of voters each of the following counties shall elect one (1) representative, to wit: Bedford, Blount, Cannon, Carroll, Chester, Cocke, Clairborne, Coffee, Crockett, DeKalb, Dickson, Dyer, Fayette, Franklin, Giles, Greene, Hardeman, Hardin, Henry, Hickman, Hawkins, Haywood, Jackson, Lake, Lauderdale, Lawrence, Lincoln, Marion, Marshall, Maury, Monroe, Montgomery,

Moore, McMinn, McNairy, Obion, Overton, Putnam, Roane, Robertson, Rutherford, Sevier, Smith, Stewart, Sullivan, Sumner, Tipton, Warren, Washington, White, Weakley, Williamson and Wilson. (Acts 1881 (E.S.) ch. 5, Section 1; 1881 (E.S.) ch. 6, Section 1; 1901, ch. 122, Section 2; 1907, ch. 178, Sections 1, 2; 1915, ch. 145; Sham., Sec. 123; Acts 1919, ch. 147, Sections 1, 2, 1925 Private ch. 472, Section 1; Code 1932, Section 140; Acts 1935, ch. 150, Section 1; 1941, ch. 58, Section 1; 1945, ch. 68, Section 1; C. Supp. 1950, Section 140.)

3-102. *Counties electing two representatives each.*—The following counties shall elect two (2) representatives each, to wit: Gibson and Madison. (Acts 1901, ch. 122, Section 3; Shan., Section 124; mod. Code 1932, Section 141.)

[fol. 88] 3-103. *Counties electing three representatives each.*—The following counties shall elect three (3) representatives each, to wit: Knox and Hamilton. (Acts 1901, ch. 122, Section 4; Shan., Section 125; Code 1932, Section 142.)

3-104. *Davidson County.*—Davidson county shall elect six (6) representatives. (Acts 1901, ch. 122, Section 5; Shan., Section 126; Code 1932, Section 143.)

3-105. *Shelby County.*—Shelby county shall elect seven (7) representatives (Acts 1901, ch. 122, section 6; Shan., section 126al; Code 1932, section 144.)

3-106. *Joint representatives.*—The following counties jointly, shall elect one representative, as follows, to wit:

First district—Johnson and Carter.

Second district—Sullivan and Hawkins.

Third district—Washington, Greene and Unicoi.

Fourth district—Jefferson and Hamblen.

Fifth district—Hancock and Grainger.

Sixth district—Scott, Campbell, and Union.

Seventh district—Anderson and Morgan.

Eighth district—Knox and Loudon.

Ninth district—Polk and Bradley.

Tenth district—Meigs and Rhea.

[fol. 89] Eleventh district—Cumberland, Bledsoe, Sequatchie, Van Buren and Grundy.

Twelfth district—Fentress, Pickett, Overton, Clay and Putnam.

Fourteenth district—Sumner, Trousdale and Macon.

Fifteenth district—Davidson and Wilson.

Seventeenth district—Giles, Lewis, Maury and Wayne.

Eighteenth district—Williamson, Cheatham and Robertson.

Nineteenth district—Montgomery and Houston.

Twentieth district—Humphreys and Perry.

Twenty-first district—Benton and Decatur.

Twenty-second district—Henry, Weakley and Carroll.

Twenty-third district—Madison and Henderson.

Twenty-sixth district—Tipton and Lauderdale.

Twenty-seventh district—Shelby and Fayette (Acts 1901, ch. 122, section 7; 1907, ch. 178, sections 1, 2; 1915, ch. 145, sections 1, 2; Shan., section 127; Acts 1919, ch. 147, section 1; 1925 Private, ch. 472, section 2; Code 1932, section 145; Acts 1933, ch. 167, section 1; 1935, ch. 150, section 2; 1941, ch. 58, section 2; 1945, ch. 68, section 2; C. Supp. 1950, section 145.)

[fol. 90] 3-107. *State senatorial districts.*—Until the next enumeration and apportionment of voters, the following counties shall comprise the senatorial districts, to wit:

First district—Johnson, Carter, Unicoi, Greene and Washington.

Second district—Sullivan and Hawkins.

Third district—Hancock, Morgan, Grainger, Claiborne, Union, Campbell, and Scott.

Fourth district—Cocke, Hamblen, Jefferson, Sevier, and Blount.

Fifth district—Knox.

Sixth district—Knox, Loudon, Anderson, and Roane.

Seventh district—McMinn, Bradley, Monroe, and Polk.

Eighth district—Hamilton.

Ninth district—Rhea, Meigs, Bledsoe, Sequatchie, Van Buren, White and Cumberland.

Tenth district—Fentress, Pickett, Clay, Overton, Putnam, and Jackson.

Eleventh district—Marion, Franklin, Grundy and Warren.

Twelfth district—Rutherford, Cannon, and DeKalb.

Thirteenth district—Wilson and Smith.

Fourteenth district—Sumner, Trousdale and Macon.

Fifteenth district—Montgomery and Robertson.

[fol. 91] Sixteenth district—Davidson.

Seventeenth district—Davidson.

Eighteenth district—Bedford, Coffee, and Moore.

Nineteenth district—Lincoln and Marshall.

Twentieth district—Maury, Perry and Lewis.

Twenty-first district—Hickman, Williamson and Cheatham.

Twenty-second district—Giles, Lawrence and Wayne.

Twenty-third district—Dickson, Humphreys, Houston and Stewart.

Twenty-fourth district—Henry and Carroll.

Twenty-fifth district—Madison, Henderson and Chester.

Twenty-sixth district—Hardeman, McNairy, Hardin, Decatur and Benton.

Twenty-seventh district—Gibson.

Twenty-eighth district—Lake, Obion and Weakley.

Twenty-ninth district—Dyer, Lauderdale and Crockett.

Thirtieth district—Tipton and Shelby.

Thirty-first district—Haywood and Fayette.

Thirty-second district—Shelby.

Thirty-third district—Shelby. (Acts 1901, ch. 122, Section 1; 1907, ch. 3, Section 1; Shan., Section 128; Code 1932, Section 146; Acts 1945, ch. 11, Section 1; C. Supp. 1950, Section 146.)

[fol. 92] Proof of Service (omitted in printing).

[fol. 97]

ATTACHMENT TO AFFIDAVIT OF JAMES M. GLASGOW

SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. 469

In the Supreme Court of Tennessee

No. 36,651

GATES KIDD et al., Complainants-Appellants,

vs.

GEORGE F. McCANLESS, Attorney General,
Defendant-Appellee.

STATEMENT IN OPPOSITION TO APPELLANTS' STATEMENT OF JURISDICTION AND MOTION TO DISMISS

The appellee, George F. McCanless, Attorney General of Tennessee, for his statement in opposition to the appellants' statement of jurisdiction, and in support of his motion to dismiss, respectfully shows the following:

I.

Statement of Issues on Appeal

This suit was commenced in the Chancery Court for Davidson County, Tennessee, by Gates Kidd and four other voters and residents of Washington County, six voters and residents of Carter County, and two voters and [fol. 98] residents of Davidson County against the Attorney General, the Secretary of State, the members of the Republican and Democratic State Primary Election Commissions, and the members of the Washington, Carter and Davidson County Election Commissions, challenging the validity of the laws enacted in 1901 which apportioned the State for seats in the General Assembly of Tennessee, a bicameral body. The Supreme Court of Tennessee reversed the holding of the Chancellor who declared that the apportionment statutes had expired with the passage of time, and held it would not declare the statute unconstitutional since the result would be to disrupt the orderly processes of government.

The bill is lengthy but its allegations were accurately summarized by the Supreme Court of Tennessee as follows:

> "... By their bill they prayed, in addition to process and general relief, a declaratory judgment of the court declaring the Apportionment Act of 1901, as amended, to be unconstitutional for the following reasons: (1) No census of qualified voters was made as required by Section 4 of Article II of the Constitution; (2) the Act was unconstitutional and discriminatory when enacted; (3) the Senate Joint Resolution adopted by the Legislature in 1901 was not followed when said Act was enacted by the General Assembly; (4) the Apportionment Act of 1901 became unconstitutional and obsolete in 1911 because a new enumeration and apportionment was not made in that year; and (5) because the three counties where the complainants reside and vote are now entitled to greater representation in the Legislature than is afforded them by said Act. The bill alleges and charges because of this last assigned reason the respective complainants who reside and

vote in their respective counties are denied the right to equal franchise and suffrage. The bill further alleges in support of these charges that a minority of [fol. 99] approximately 37% of the voting population of the State now elects and controls 20 of the 33 members of the Senate; that a minority of 40% of the voting population of the State now controls 63 of the 99 members of the House of Representatives. The bill alleges also that the defendants will continue to conduct elections for members of the General Assembly according to said Act unless they are restrained by the court.

"The bill seeks an injunction restraining the defendants from holding any election under said alleged unconstitutional Act either in 1956 or thereafter. In the alternative the bill prays either (a) that a writ of mandamus issue ordering and compelling the defendants, State Board of Election, Democratic and Republican Primary Election Commissions, and the County Election Commissioners of Carter, Washington and Davidson Counties to prepare for a general election at large in 1956, wherein every qualified voter of the State would have an equal right to vote for every Representative and every Senator to serve in the 1957 General Assembly or any subsequent General Assembly, or (b) that by decree this Court mathematically reapportion the State of Tennessee and order the defendant Election Commissioners to prepare for and conduct the 1956 election of Representatives and Senators of the State in accordance with the decree mathematically reapportioning the State" (Appellants' Statement, pp. 3a-4a).*

The Republican State Primary Election Commission filed an answer and a cross bill. By the latter, the Governor and the members of the General Assembly of 1955 were made parties. The cross bill prayed that the Court require them to reapportion the State. On motion and demurrer the Chancellor dismissed the cross bill.

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* This is a reference to the Appellants' Jurisdictional Statement which contains the opinion of the Supreme Court of Tennessee.

[fol. 100] The Attorney General demurred to the original bill upon the theory that a political or legislative question was presented. The jurisdiction of the Court was assailed for various reasons and the power of the Court to declare the rights of the parties, to grant any relief, to enter a decree reapportioning the State, or to hold or conduct an election to elect members of the General Assembly, was challenged. In substance and effect, the demurrers asserted the constitutionality of the apportionment laws because (1) the complainants are guilty of laches, since they waited 54 years to challenge them; (2) the orderly processes of government would be disrupted, since Tennessee would be without a General Assembly if the bill should be maintained; and (3) the bill did not state any reason for declaring the statutes unconstitutional.

The Chancellor sustained the bill, overruling those grounds of the demurrer defending the constitutionality of the statutes. The Attorney General prayed and was granted an appeal to the Supreme Court of Tennessee. The latter, pretermitting the issue of justiciability, held that the Chancellor erroneously overruled the tenth ground of the Attorney General's demurrer; i.e., the courts will not declare a statute unconstitutional if the result will be to disrupt the orderly processes of government. Therefore, the matter stands upon the technical record and without proof as to the merits.

By the attempt to appeal to this Court, the only question raised is whether the appellants have been denied equal protection of the laws within the meaning of the fourteenth amendment to the Constitution of the United States. They theorize that due to the increase and shifts in population, an elector's ballot is given more weight in some instances than in others because a member of the General Assembly may represent far more electors in some districts and counties than in others. In other words, they contend that some assembly districts are over-represented [fol. 101] while others are under-represented in the General Assembly on the basis of the total number of qualified voters in the respective districts. Relying upon the Federal population census of 1950, the appellants have alleged inequalities of representation although the State Constitu-

tion requires "an enumeration of qualified voters." Art. II, Sec. 4, Constitution of Tennessee, Appendix B. Nevertheless, the appellants insist that a majority of the General Assembly represents less than a majority of the qualified voters. This, they say, is undemocratic and denies them a republican form of government. They contend that the concept of "majority rule" is so ingrained into our constitutional system that they are denied equal protection under the laws as guaranteed by the Federal Constitution.

Also, the appellants argue that since a minority of the qualified voters elect a majority of the Assembly that their right of franchise is debased so that they are denied the right of equal suffrage in free and equal elections. They now attempt to invoke the jurisdiction of this Court, although the question presented is purely political and legislative.

Significantly, the bill fails to allege, and we do not understand that the appellants insist, that there is a prior valid apportionment law upon which to fall back if the present apportionment laws should be declared unconstitutional. There is no charge that any elector has been denied the right to cast his vote in a completely free election as guaranteed by the Constitution of Tennessee, Art. IV, Sec. 1, Appendix B. A lack of purity of the ballot box is not charged. There is no suggestion that every vote is not counted and accorded equal weight and dignity by those conducting elections. Neither is it averred that the members of the General Assembly are elected by less than a majority of the votes cast in the respective Assembly districts. Therefore, as we understand the law, the ap-
[fol. 102] pellants are exercising every right of franchise to which they are entitled under the Constitution. Notwithstanding these, the appellants insist that they are the subjects of invidious discrimination at the ballot box.

II.

The Opinion of the State Court Rests Upon an Adequate and Independent Non-Federal Ground

In holding that to declare the apportionment laws unconstitutional would disrupt the orderly processes of gov-

ernment, the Supreme Court of Tennessee squarely based its opinion upon the broadest possible state ground. The Court logically and inescapably concluded:

> "The ultimate result of holding this Act unconstitutional by reason of the lapse of time would be to deprive us of the present legislature and the means of electing a new one and ultimately bring about the destruction of the state itself" (Appellants' Statement, p. 9a).

The Court reasoned that once it was determined that the members of the General Assembly are not de jure officers, they have no authority to act as de facto officers after a judicial determination of their status. *Heard* v. *Elliot*, 116 Tenn. 150, 92 S. W. 764; *Beaver* v. *Hall*, 142 Tenn. 416, 217 S. W. 649; *Rideout* v. *State*, 161 Tenn. 248, 30 S. W. 2d 255, 71 A. L. R. 830. The Court pointed out that where the person or body is not acting in good faith and the public knows of the want of authority, there can be no de facto doctrine. Thus, it follows that this attempted appeal should be dismissed because the state decision rests upon an adequate and independent non-federal ground, and this Court is without jurisdiction. *Black* v. *Cutter Laboratories* (Cal., 1956), 76 S. Ct. 824; *Herb* v. *Pitcairn* [fol. 103] (Ill., 1945), 65 S. Ct. 459, 324 U. S. 117, 89 L. Ed. 789; *Enterprise Irrigating District* v. *Farmers Mutual Canal Co.* (Neb., 1917), 37 S. Ct. 318, 243 U. S. 157, 61 L. Ed. 644.

Further, it is immaterial whether the decision of the State Court is right or wrong since there is no assertion that the State Court adopted its view of the non-federal question in order to evade a federal constitutional issue, and the state decision has no relation to any federal question raised in the state courts. *Enterprise Irrigation District* v. *Farmers Mutual Canal Co., supra.* There it is also said that this Court is without power to disturb such a judgment.

Neither can the decision of the State Court be reviewed unless the non-federal ground is unfounded. In *McCoy* v. *Shaw* (Okla., 1928), 48 S. Ct. 519, 277 U. S. 302, 72 L. Ed. 891, this Court declared:

> "It is settled law that a judgment of a state court which is put upon a non-federal ground, independent of the federal question involved, and broad enough to sustain the judgment, *cannot be reviewed by this Court*, unless the non-federal ground is so plainly unfounded that it may be regarded as essentially arbitrary or a mere device to prevent the review of a decision upon the federal question." (Emphasis supplied.)

Although we think that the foregoing is sufficient to warrant the dismissal of the attempted appeal, we invoke another rule of law to sustain the position of the appellee.

The rule has long been recognized that the state courts have absolute power and authority to adjudicate the common law of the state and to construe the state statutes and Constitution. However, we quote from the unequivocating language of Mr. Justice Cardozo, who wrote:

> [fol. 104] "A judgment by the highest Court of the State as to the meaning and effect of its own Constitution is decisive and controlling everywhere."

Highland Farms Dairy, Inc. v. *Agnew* (Va., 1937), 57 S. Ct. 549, 300 U. S. 608.

The application of the rule to the case at bar is obvious. The Supreme Court of Tennessee has decided that if the apportionment laws are held unconstitutional the State itself will be destroyed. This would necessarily result if the General Assembly is declared to be non-existent. Thereby, the basic framework of constitutional government in Tennessee would be destroyed. Instead of having three departments of government, the State would be reduced to two. Consequently, a democratic form of constitutional government as guaranteed by Art. IV, Sec. 4, Constitution of the United States, would end by a decision of this Court. Where such a result may be contemplated, it is inconceivable that the appellants would pursue the matter to the extent of asking this Court to destroy the government of the State. What more serious question involving a state constitution could there be?

The argument of the appellants that they are denied a republican form of government because a minority of the qualified voters may elect a majority of the members of the General Assembly is specious. It is generally known that candidates for public office are frequently elected by less than a majority of the votes cast in an election where there are many candidates, or in situations where less than a majority of the electorate votes in an election.

Speculation always arises in a presidential election year that one of the candidates may receive a majority of the popular vote but less than a majority in the electoral college.

A similar situation prevails in Georgia under the county unit voting plan and this Court has refused to disturb the system, as will be discussed later in this statement.

[fol. 105] In any event, the appellants cannot raise the question of a republican form of government in this proceeding because the subject is beyond the scope of judicial power. *Ohio ex rel. Bryant* v. *Akron Metropolitan Park District* (Ohio, 1930), 50 S. Ct. 228, 281 U. S. 74, 74 L. Ed. 710, 66 A. L. R. 1460.

III.

No Substantial Federal Question Is Raised by the Attempted Appeal

No substantial federal question is presented by the appellants, who claim that their votes do not have as much weight as the votes of those who live in assembly districts having fewer qualified voters than in the districts in which the appellants reside. The gravamen of their complaint is that they do not have the opportunity to vote for as many members of the General Assembly as they think they should instead of the relative value of their voting rights. Thereby, a larger number of senators and representatives, representing the appellants' districts, would give them greater representation and more votes in the General Assembly. This is the real issue.

These are not the same rights which come within the purview of the equal protection clause of the fourteenth amendment. They are not the same political rights to

which the cases refer when invidious and purposeful discrimination is condemned. Neither are they the rights of the character protected in the cases upon which the appellants rely in support of their position.

Snowden v. *Hughes* (Ill., 1944), 64 S. Ct. 397, 321 U. S. 1; *McPherson* v. *Blacker* (Mich., 1892), 13 S. Ct. 3, 146 U. S. 1, 36 L. Ed. 869; *Nixon* v. *Herndon* (Tex., 1926), 47 S. Ct. 446, 273 U. S. 536, 71 L. Ed. 759; *Nixon* v. *Condon* (Tex., 1932), 52 S. Ct. 484, 286 U. S. 73, 76 L. Ed. 984, 88 A. L. R. 458, are cited. The Snowden and Nixon cases were brought by [fol. 106] individuals to obtain damages for the infringement of civil rights.

In McPherson, this Court refused to apply the equal protection clause to a Michigan statute which provided for the election of presidential electors by congressional districts instead of the state at large. In discussing the object of the fourteenth amendment and voting rights, the Court emphasizes:

> "The object of the fourteenth amendment in respect of citizenship was to preserve equality of rights and to prevent discrimination as between citizens, but not radically change the whole theory of the state and federal governments to each other, and both governments to the people" (146 U. S. 39).
>
> * * * * * * * *
>
> "If presidential electors are appointed by the legislatures, no discrimination is made; if they are elected in districts where each citizen has an equal right to vote, the same as any other citizen has, no discrimination is made" (146 U. S. 40).

There is no discrimination as to any elector's right of franchise in Tennessee within the doctrine of the McPherson case.

The case of *Thomas* v. *Reid* (1930), 142 Okla. 38, 285 Pac. 92, is of importance only in its holding that a statute requiring approval of 60% of the voters for the sale of a municipal power plant violates the Constitution of Oklahoma. Likewise, the case of *Maynard* v. *Board of Canvassers* (1890), 84 Mich. 228, 47 N. W. 756, 11 L. R. A. 32,

is authority only for the proposition that cumulative voting is impliedly prohibited by the Michigan Constitution. Neither case supports the appellants' position in this Court nor may be considered an authority holding that this Court has jurisdiction in this instance.

[fol. 107] In *Cook* v. *State* (1891), 90 Tenn. 407, 116 S. W. 471, the Court upheld the constitutionality of a statute making it a criminal offense to remove ballots, to assist electors in marking their ballots, or to instruct them how to vote.

Construing the Organic Act of Hawaii, 48 U. S. C. A., Sec. 491, which requires reapportionment from "time to time" in *Dyer* v. *Abe* (1956), 138 F. Supp. 220, the Federal District Court held that the plaintiff, a voter, had been denied equal protection of the laws due to the failure of the territorial legislature to reapportion the territory. Painstakingly, the Court emphasizes the difference between a "federal-territorial" relationship and a "federal-state" relationship, and, upon this distinction, differentiates the case from *Colgrove* v. *Green* (1946), 66 S. Ct. 1198, 326 U. S. 459, 90 L. Ed. 1432, where reapportionment was held to be a political question.

In the eight cases cited there is not one which holds that this Court has jurisdiction in a case similar to the one at bar. None of the cases holds that the reapportionment of a state presents a federal question and none supports the jurisdiction of this Court.

In the absence of a substantial federal question, this Court will dismiss an attempted appeal for lack of jurisdiction. *Hulbert* v. *Chicago* (Ill., 1906), 26 S. Ct. 617, 201 U. S. 275; *Zucht* v. *King* (Tex., 1922), 43 S. Ct. 24, 260 U. S. 174.

IV.

Reapportionment Is a Political Question

The appellee reiterates the contention that the character of the political question presented here is not the same as in those cases where relief is granted for a private wrong. [fol. 108] The problem presented in this case affects the people of Tennessee as a body politic and sovereign. This is not a damage suit as were the Snowden and Nixon cases. This distinction was recognized in *Colgrove* v. *Green* where

the Court stated that the basis of the suit is " . . . a wrong suffered by Illinois as a polity."

The Colgrove decision clearly supports the appellee's position in this case, and the question of reapportioning congressional districts is patently stronger than one involving the reapportionment of the general assembly of a state.

Subsequently, the Court decided *MacDougall* v. *Green* (1948), 69 S. Ct. 1, 335 U. S. 281, where this Court held in a per curiam opinion that an Illinois statute requiring a qualifying petition for a candidate for a new political party to be signed by 25,000 qualified voters, including 200 qualified voters from 50 counties does not violate the Fourteenth Amendment.

Again, the principle of these cases was approved and affirmed in *South* v. *Peters* (1950), 70 S. Ct. 641, 339 U. S. 276, 94 L. Ed. 834, where Georgia's county unit system of voting was challenged in the Federal District Court. In affirming the District Court, which dismissed the appellants' petition, this Court in a per curiam opinion asserted,

> " . . . Federal Courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." 339 U. S. 277.

This pronouncement by this Court did not satisfy those who would assault Georgia's county unit laws. A suit was then filed in the state court making a similar attack. *Cox* v. *Peters* (1951), 208 Ga. 498, 67 S. E. 2d 579. The insistence, among others, in the state court was that the [fol. 109] petitioner's vote had not received its full value in violation of the equal protection clause of the fourteenth amendment. Holding that a party primary is not an election within the statutes and constitution, the Supreme Court of Georgia denied relief in damages for the infringement of his civil rights. Thereupon, the petitioner, Cox, sought to appeal to this Court. The appellee's motion to dismiss was granted and the Court announced " . . . the appeal is dismissed for the want of a substantial federal question." *Cox* v. *Peters* (Ga., 1952), 72 S. Ct. 559, 342 U. S. 936, 96 L. Ed. 697. Also, see, *Turman* v. *Duckworth* (D. C.

Ga., 1946), 68 F. Supp. 744, appeal dismissed 67 S. Ct. 21, 329 U. S. 675, 91 L. Ed. 596, rehearing denied 67 S. Ct. 296, 329 U. S. 829, 91 L. Ed. 704; *Cook* v. *Fortson* (D. C. Ga., 1946), 68 F. Supp. 624, appeal dismissed 67 S. Ct. 21, 329 U. S. 675, 91 L. Ed. 596, rehearing denied 67 S. Ct. 296, 329 U. S. 839, 91 L. Ed. 703.

The insistence that a vote has no weight when cast in a county in Georgia for a candidate receiving less than a majority is more compelling than the contention made in this case that the voter is denied equal voting strength in the General Assembly. Yet, the equal protection clause affords no relief for the Georgia voter.

Clearly, we think, the decisions of this Court declare the problem of reapportionment to be a political question which should be addressed to the people of Tennessee and their General Assembly. The Constitution of Tennessee belongs to its people. They are capable of determining political and governmental issues arising in connection with their state government. They should be permitted to resolve the question of reapportionment in their own way.

Wherefore, the appellee respectfully moves that the within appeal be dismissed or that the judgment and de-[fol. 110] cree of the Supreme Court of the State of Tennessee be affirmed.

Jack Wilson, James M. Glasgow, Assistant Attorneys General of Tennessee, Attorneys for the Appellee.

Certificate of Service

The undersigned, a member of the Bar of the Supreme Court of the United States and one of the counsel of record for the appellee, hereby certifies that on the ..... day of October, 1956, he served the within and foregoing statement in opposition to the appellants' statement of jurisdiction and motion to dismiss on Gates Kidd et al., appellants, by depositing at the Post Office at Nashville, Davidson County, Tennessee, two copies each of the within and foregoing statement securely enclosed in an envelope, postage duly prepaid, addressed to one of the attorneys of

the appellants at his post office address as stated below, that is to say, Honorable Z. T. Osborn, Jr., Barksdale, Hudgins and Osborn, 1316 Nashville Trust Building, Nashville 3, Tennessee.

James M. Glasgow, Assistant Attorney General.

Mailing address: Supreme Court Building, Nashville, Tennessee.

[fol. 111]

APPENDIX A.

Constitution of Tennessee.

Article II.

Sec. 1. Division of powers.—The powers of the Government shall be divided into three distinct departments: the Legislative, Executive and Judicial.

Sec. 2. Limitation of powers.—No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.

Sec. 3. Legislative authority—Term of office.—The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both dependent on the people; who shall hold their offices for two years from the day of the general election.

Sec. 4. Census.—An enumeration of the qualified voters, and an apportionment of the Representatives in the General Assembly, shall be made in the year one thousand eight hundred and seventy-one, and within every subsequent term of ten years.

Sec. 5. Apportionment of representatives.—The number of Representatives shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each; and shall not exceed seventy-five, until the population of the State shall be one million and a half, and shall never exceed ninety-nine; Provided that any

county having two-thirds of the ratio shall be entitled to one member.

[fol. 112] Sec. 6. Apportionment of senators.—The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified electors in each, and shall not exceed one-third the number of representatives. In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of members to the House of Representatives, shall be made up to such county or counties in the Senate, as near as may be practicable. When a district is composed of two or more counties, they shall be adjoining; and no county shall be divided in forming a district.

* * * * * * *

[fol. 113]

Appendix B.

Constitution of Tennessee.

Article IV.

Sec. 1. Right to vote—Election precincts—Military duty. —Every person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein such person may offer to vote for three months, next preceding the day of election, shall be entitled to vote for electors for President and Vice-President of the United States, members of the General Assembly and other civil officers for the county or district in which such person resides; and there shall be no other qualification attached to the right of suffrage.

The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box.

All male citizens of this State shall be subject to the performance of military duty, as may be prescribed by law.

[fol. 114] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE

[Title omitted]

ORDER PERMITTING AMENDMENT TO COMPLAINT—July 21, 1959

Upon application of the plaintiffs made in open Court at the argument of the Motion to Dismiss made by the defendants, it is

Ordered that plaintiffs be and they are hereby permitted to amend their Complaint heretofore filed in this cause, in accordance with an amendment hereto attached and made a part hereof.

Enter this 21 day of July, 1959.

Wm. E. Miller, Judge.

O.K. for Entry, Hobart Atkins, Walter Chandler, Denney, Leftwich & Osborn, Attorneys for Plaintiffs.

Allison B. Humphreys, Solicitor General for the State of Tennessee.

July 21, 1959

[fol. 115] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE

[Title omitted]

AMENDMENT TO COMPLAINT—Filed July 21, 1959

Leave of Court having heretofore been obtained, the plaintiffs amend their Complaint by striking the present

ninth section, or Paragraph IX, of their Complaint and inserting in lieu thereof the following:

[fol. 116] IX

"The last reapportionment of the General Assembly of Tennessee was made by Chapter 122 of the Public Acts of Tennessee of 1901; this chapter now constitutes Sections 3-101 to 3-109 of the Tennessee Code Annotated.

That the Act of 1901 was unconstitutional when drawn in 1901 because:

1. No census of qualified voters upon which a proper apportionment could be based was actually made in spite of the explicit requirement of Section 4 of Article II that such an enumeration of qualified voters be taken and made the basis of each decennial reapportionment.

2. The apportionment of representatives and senators was unfairly and unequally made, as shown by the best evidence of the voting population actually residing in the counties of Tennessee in 1901, the United States Census, which was taken in pursuance of the Act of Congress of March 3, 1899, 30 Stat. 1014, Section 201, Title 13 USCA; i.e., the United States census would show that the number of qualified voters of both Carter County and Anderson County exceeded that of some fifteen counties which were each given separate representation, while both Carter County and Anderson County were denied separate representation; and that Senate Joint Resolution No. 35, adopted February 7, approved February 8, 1901, was not obeyed by the reapportioning committee which drew the Act of 1901 but that the committee recommended and the General Assembly voted an Act which unreasonably discriminated against Anderson and Carter Counties, inter alia.

The Federal census of 1900 contained an enumeration of qualified voters of the counties and districts of Tennessee; [fol. 117] this census demonstrated that Davidson County was entitled to additional representation in the Senate and in the House of Representatives of Tennessee. Despite this, said act of 1901 decreased the representation had by Davidson County in the House of Representatives under the Apportionment Act of 1891. As will be shown at the hear-

ing, said Act of 1901 made no apportionment of Representatives and Senators in accordance with the constitutional formula heretofore set forth, but instead arbitrarily and capriciously apportioned representatives in the Senate and House without reference to any enumeration of qualified voters and, indeed, without reference to any logical or reasonable formula whatever. The apportionment made in said act was in no wise the exercise of any discretion allowed the Legislature by the Constitution of Tennessee, nor was it made in the exercise of any right to make a political decision as to the composition of the General Assembly.

There have been five Federal enumerations of the population of the State of Tennessee since 1900, namely, 1910, 1920, 1930, 1940, and 1950. All of the Tennessee Legislatures after each such enumeration have been under a constitutional mandate in accordance with their oaths of office to support the Constitution of the United States and Constitution of the State of Tennessee, described by Article II, Sections 4, 5 and 6 of the Tennessee Constitution, to reapportion said senatorial and representative districts in accordance with the result of the latest available enumeration. Since the Federal Census of 1910, there have been numerous regular and extra sessions of the Tennessee Legislature; however, each and every such Legislature, including the present Legislature up to the time of the [fol. 118] issuance of this complaint, has failed to reapportion and readjust the boundaries of said districts, all in violation of the Constitution of the United States and Constitution of the State of Tennessee.

Denney, Leftwich & Osborn, Nashville, Tennessee; Hobart F. Atkins, Knoxville, Tennessee; Chandler, Manire & Chandler, Memphis, Tennessee.

[fol. 119] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

CHARLES W. BAKER, et al., Plaintiffs,

v.

JOE C. CARR, Secretary of State of Tennessee, et al., Defendants.

MEMORANDUM OPINION ON CONVENING THREE-JUDGE COURT—July 31, 1959

It is urgently and ably insisted by defendants that the federal question sought to be made by the complaint is "obviously without merit" and that the Court under the doctrine of Ex Parte Poresky, 290 U. S. 30, should therefore dismiss the action without taking steps to constitute a court of three judges under 28 U. S. C. A. Section 2281.

Without undertaking a detailed resume of the allegations of the complaint, the short of the matter is that under the Constitution of Tennessee the members of the House of Representatives are limited to 99 in number and the members of the Senate to 33, and the legislature is directed at [fol. 120] the expiration of each 10-year period after 1871 to make an enumeration of the qualified voters and to apportion the number of members of the legislature among the several counties or districts according to the number of qualified voters therein. Tenn. Const. Art. 2, Secs. 4, 5 and 6. However, according to the allegations of the bill, (accepted as true for the purposes of the present motion) these mandatory requirements of the State Constitution have been systematically and continuously violated and ignored by the Legislature of Tennessee. No reapportionment act has been passed since the Act of 1901, and even that act, the amended complaint alleges, was enacted without the enumeration of voters required by the Constitution

of the State. As a result of changes in population the existing legislative apportionment has become progressively discriminatory in character. The failure and refusal of the legislature to abide by plain and unequivocal provisions of the state Constitution have resulted in a debasement of the voting rights of large numbers of citizens as well as in a gross inequality of representation in the legislative councils of the state.

The plaintiffs, suing on their own behalf and on behalf of others similarly situated, reside in geographical areas which have suffered most from the discrimination. They invoke the Constitution of the United States, particularly the equal protection and due process clauses of the Fourteenth Amendment, contending that the legislature of Tennessee in failing to comply with the state Constitution has subjected them to an invidious discrimination that con- [fol. 121] stitutes a denial of the equal protection of the law and a deprivation of due process of law.

The defendants, at this time at least, do not deny the discrimination, nor do they question the fact that the state legislature has failed and refused to comply with the mandate of the State Constitution. What they do say is that the question involved is exclusively of a political nature and does not present a justiciable controversy, with the result that the Court has no power or jurisdiction to intervene to grant any kind of relief.

The problem of legislative reapportionment has been before the courts on numerous occasions and it would serve no useful purpose to undertake at this time a survey or review of the many decisions on the question. There can be no doubt that generally speaking the courts have been reluctant to enter into an area that might bring them into collision with a coordinate branch of the government. This has resulted in many cases in creating a zone which is "off limits" to judicial authority, leaving a manifest wrong without a judicial remedy. Some courts refuse to intervene upon the ground that the controversy is of a peculiarly political nature, or, as otherwise expressed, is not a justiciable controversy, while the refusal to intervene in other opinions is pitched upon the theory that the courts should exercise their equity discretion to refuse to exercise juris-

diction in a controversy so fraught with political implications.

[fol. 122] After a careful review of the allegations of the complaint in the light of the many authorities cited by counsel for the respective parties, the Court has reached the conclusion that the issues presented are of such character that they should be evaluated and considered by a three-judge court as provided by statute and that this Court should not undertake to dismiss the complaint summarily. Notwithstanding some expressions in the cases which would indicate that there is no hope of judicial relief in a case of this type, the Court is not prepared to say that the federal question invoked is so obviously without merit that the complaint should not even be referred to a three-judge court for consideration.

Possibly the leading decision of the Supreme Court of the United States upon the general question is Colegrove v. Green, 328 U. S. 549, in which the court sustained the dismissal of an action of qualified voters in certain Illinois Congressional districts to restrain the holding of elections under the provisions of an Illinois law governing such Congressional districts. It may be that the decision in this case closes the door to relief in the present case but the Court is not prepared to say that this conclusion necessarily follows or that it follows so clearly and distinctly that it is not even debatable. In that case seven justices of the Supreme Court heard the appeal. While a majority of four justices held that the action should be dismissed, it is significant that they disagreed as to the reasons for such dis-[fol. 123] missal, and that three of the justices dissented from the majority and expressed the view that the action should be sustained. Three of the justices in the majority were of the opinion that the question involved was so political in nature that the courts lacked jurisdiction and that the action should be dismissed for that reason. The other majority justice, while agreeing that the action should be dismissed, was of the opinion that the court had jurisdiction but that in the exercise of its discretion as a court of equity, it should decline to exercise such jurisdiction by intervening in a controversy having so many serious problems and complications. The three dissenting justices were

of the opinion not only that the court had jurisdiction but that such jurisdiction should actually be exercised to enjoin the holding of the election under the Illinois Act. It is also worthy of note, as pointed out by Justice Frankfurter in his opinion, that the case could have been disposed of by affirming the dismissal on the authority of the prior decision in Wood v. Broom, 287 U. S. 1, holding that where the Congressional Reapportionment Act did not contain a requirement as to the compactness, contiguity, and equality in population of districts, the state legislature in creating Congressional districts need not observe such requirement.

Whether Colegrove v. Green requires a dismissal of the present action is a question which can be fully considered and determined by a three-judge court. For present pur-[fol. 124] poses it is enough to say that there are differences between that case and the present one that may ultimately prove to be significant. In the first place, Colegrove v. Green involved Congressional districts created by a state legislature under an Act of Congress which contained no requirement that the districts should be set up on the basis of equality or approximate equality of population. Consequently, in failing to redistrict, the legislature of Illinois did not violate any specific provision of its own Constitution or any specific provision of federal law requiring periodic redistricting upon the basis of equality. Further, in the Colegrove case there was ample power vested in Congress under the Federal Constitution to redistrict the state if the existing districts set up by state law had become inequitable. In the present case, as pointed out, not only is there a specific constitutional provision requiring periodic reapportionment on the basis of equality but the legislature of the state has refused to act after repeated efforts and demands to obtain relief. The situation is such that if there is no judicial remedy there would appear to be no practical remedy at all.

McDougall v. Green, 335 U. S. 281, another Supreme Court case cited by defendants as requiring dismissal of the present action, was disposed of by the court in a brief per curiam opinion, but as this Court construes the opinion, the questions here presented were not reached. It is apparent that the court was of the opinion and actually held that the

[fol. 125] Illinois law attacked in that case did not constitute a denial of the equal protection of the law and did not deprive the plaintiffs of due process of law. It was stated in the opinion that "it is allowable State policy to require that candidates for state-wide office should have support not limited to a concentrated locality". In short, the court held that there was no violation of federal law established, and consequently it was not necessary for the court to decide whether it had power or jurisdiction to grant relief if the violation of federal law had been made to appear. Three justices dissented from the majority, being of the view that the state law constituted a violation of the equal protection clause of the Fourteenth Amendment and that the court should declare the law void. Mr. Justice Rutledge, as in Colegrove v. Green, concurred in dismissing the action but expressed the opinion that a violation of the Fourteenth Amendment was shown, and that the dismissal should be based upon the discretionary right of a court of equity to refuse to entertain jurisdiction.

In South v. Peters, 339 U. S. 276, the court refused to enjoin adherence in the forthcoming primary to the statute of Georgia prescribing the county unit system. Again in a brief per curiam opinion, the action of the district court in dismissing the action was affirmed, but it is not clear from the opinion whether the refusal to intervene is based upon a lack of jurisdiction or upon the ground that equitable relief should be refused under the particular circumstances of the case. This decision also was by a divided [fol. 126] court, two justices believing that the relief should be granted.

A careful reading of the opinion of the Supreme Court of Tennessee in Kidd v. McCanless, 200 Tenn. 273, involving the same laws of Tennessee as the instant case, reveals that the fundamental basis of the decision was the court's opinion that relief could not be granted without completely disrupting, if not destroying, the government of the state. After finding that the de facto doctrine could not be applied and that if the Reapportionment Act was declared unconstitutional the state would be deprived of a legislature, the court held under such circumstances that a declaration of unconstitutionality should be withheld. Thus, the opinion

would appear to stand for the proposition that the courts should refuse to intervene in the exercise of a proper discretion in given circumstances, and not for the proposition that jurisdiction does not exist or is completely wanting in such cases. The Supreme Court of the United States simply dismissed the appeal (352 U. S. 920) without comment, citing Colegrove v. Green, supra. The fair inference is that the Supreme Court concurred in the finding of the Tennessee Court that equitable relief should be denied in a case where to grant such relief the government of the state would be disrupted or thrown into chaos and confusion.

From this brief review of some of the more frequently cited decisions of the Supreme Court, it would appear to be at least debatable whether that court has foreclosed the [fol. 127] question in all cases of legislative reapportionment. It can certainly be said that generally there has been no unanimity of opinion among the justices of the Supreme Court either as to the result to be reached or as to the grounds for refusing intervention. If the issues are not conclusively settled against the plaintiffs by prior Supreme Court decisions, as to which the Court presently expresses no opinion, the questions of jurisdiction and the propriety of exercising or withholding it, would have to be decided in the light of all relevant factors, including a consideration of the fundamental principle of separation of powers, the desirability of avoiding conflicts with other branches of the government, the delicacy of the relationship existing between the federal and state governments, the possibility of the disruption of the governmental affairs of the state, the nature of the rights claimed by the plaintiffs, the degree and extent to which these rights have been violated, and the ability or inability of the courts to grant effective relief. If it should be assumed that jurisdiction does exist, it would appear that the courts should hesitate to dismiss actions of this character hastily or summarily, especially where a violation of individual constitutional rights is clearly established. Under such circumstances a court of equity should at least be willing from time to time to re-evaluate the problem and to re-explore the possibilities of devising an appropriate and effective remedy—a remedy which would safeguard the integrity of the state

government and at the same time protect and enforce the rights of the individual citizen.

[fol. 128] Believing that the questions presented should be considered by a court of three judges, the Court has, pursuant to 28 U. S. C. A. Section 2284, notified the Chief Judge of the Sixth Circuit of the pendency of the action and the ruling of the Court herein denying the motion to dismiss. This will result in the constitution of a court of three judges under 28 U. S. C. A. Section 2281.

William E. Miller, United States District Judge.

[fol. 129]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

ORDER DENYING MOTION TO DISMISS WITHOUT ASSEMBLING A THREE-JUDGE COURT—July 31, 1959

In this action, for the reasons set forth in memorandum filed herein on July 31, 1959, the defendants' motion, filed June 17, 1959, to dismiss the action without assembling a three-judge court upon the ground that the action does not raise a substantial federal question, is denied.

Wm. E. Miller, United States District Judge.

[fol. 130]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nashville Civil No. 2724

DESIGNATION OF THREE-JUDGE COURT—August 10, 1959

Chief Judge Thomas F. McAllister of the Court of Appeals for the Sixth Circuit being absent from the circuit and the geographical boundaries of the United States of America and temporarily unable to perform the duties of

Chief Judge, and whereas I, being the circuit judge of said Court in active service, present in the circuit, able and qualified to act and next in precedence, am authorized and directed to act as Chief Judge under the provisions of Section 45, Title 28, U. S. Code, and whereas in my judgment the public interest so requires;

Now, therefore, pursuant to notification by the United States District Judge for the Middle District of Tennessee and the provisions of Sections 2281 and 2284, Title 28, U. S. Code, I do hereby designate and assign the Honorable John D. Martin, United States Circuit Judge, Court of Appeals for the Sixth Circuit, the Honorable Marion S. Boyd, United States District Judge for the Western District of Tennessee, and the Honorable William E. Miller, United States District Judge for the Middle District of Tennessee, to constitute a Three-Judge Court in the Middle District of Tennessee for the hearing of Civil Action No. 2724, Nashville Division, Charles W. Baker, et al., plaintiffs, v. Joe C. Carr, Secretary of State of Tennessee, et al., therein pending, during the period beginning August 11, 1959, and ending December 31, 1959, and for such further time as may be required to complete unfinished business in connection with the hearing.

Dated: August 10, 1959

Shackelford Miller, Jr., Acting Chief Judge, Sixth Circuit.

[fol. 131] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE

[Title omitted]

MOTION OF BEN WEST TO INTERVENE AS A PLAINTIFF—Filed November 17, 1959

Ben West, Mayor of the City of Nashville, Tennessee, acting on behalf of all the residents of the City of Nashville,

Tennessee, as authorized by the City Council of Nashville, Tennessee, moves the Court for an order permitting him to intervene as a plaintiff in this action and to file a complaint in order to assert the claims in such proposed complaint on the grounds that:

1. The representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action.

[fol. 132] 2. The applicant's claim and the main action have questions of law and fact in common.

Dated November 17th 1959.

Z. T. Osborn, Jr., Denney, Leftwich & Osborn, Nashville Trust Building, Nashville, Tennessee; Harris A. Gilbert, Barksdale & Hudgins, Nashville Trust Building, Nashville, Tennessee, Attorneys for Ben West, Mayor, Applicant for Intervention.

Robert H. Jennings, City Attorney, City of Nashville, City Hall, Nashville, Tennessee.

[fol. 133] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

MOTION OF CITY OF CHATTANOOGA TO INTERVENE—
Filed November 23, 1959

The City of Chattanooga, Tennessee, a municipal corporation under the laws of Tennessee with situs in Hamilton County, Tennessee, moves for leave to intervene in this action in order to assert the rights and claims of its 158,100 citizens and residents under the complaint and other pleadings heretofore filed by Plaintiffs.

1. Intervenor desires to file a complaint as such, adopting the allegations and prayers contained in the original complaint and other pleadings filed by Plaintiffs.

2. The citizens and residents of the City of Chattanooga, Tennessee, are members of the same class of citizens and residents of the State of Tennessee who have been deprived of fair and adequate representation in the General Assembly of the State of Tennessee as the original Plaintiffs herein and may be bound by a judgment in this action.

Wherefore, Applicant, City of Chattanooga, Tennessee moves for leave to intervene as Plaintiff in this action.

E. K. Meacham, Attorney for Applicant, 324 Hamilton National Bank Building, Chattanooga, Tennessee.

Of Counsel: J. W. Anderson, City Attorney, Chattanooga, Tennessee.

[fol. 134] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

ORDER ALLOWING CITY OF CHATTANOOGA TO FILE COMPLAINT IN INTERVENTION—November 23, 1959

This cause came on to be heard this November 23, 1959, on the motion of the City of Chattanooga, Tennessee, a Municipal Corporation under the laws of Tennessee, and the Court being fully advised in the matter,

It is Ordered that the City of Chattanooga, Tennessee, a municipal corporation, be, and it hereby is, allowed to enter its appearance in said cause and to file its complaint in intervention therein.

Approved for entry.

John D. Martin, Marion S. Boyd, William E. Miller, U. S. Judges.

[fol. 135] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

COMPLAINT OF CITY OF CHATTANOOGA AS INTERVENOR—
Filed November 23, 1959

The complaint of the City of Chattanooga, Tennessee, filed pursuant to order herein, respectfully represents to this honorable Court:

1. Plaintiff is a municipal corporation under the laws of Tennessee with situs in Hamilton County, Tennessee with a current population of 158,100 citizens. Its citizens and residents are entitled to vote for members of the Legislature of the State of Tennessee. The citizens and residents of Plaintiff are among those citizens of the State of Tennessee now denied the right to equal suffrage in free and equal elections, which right is granted them by the Constitution of the State of Tennessee and by the Fourteenth Amendment to the Constitution of the United States by reason of the equal protections of the laws guaranteed to the citizens and residents of Plaintiff and others similarly situated. Plaintiff desires to intervene in this cause for the reason that citizens of the City of Chattanooga, Tennessee are not specifically named as plaintiffs in said cause, although they are entitled to present to this Court the interest of said citizens in the purposes of the Complaint filed herein.

2. Plaintiff, City of Chattanooga, Tennessee, therefore adopts all the material allegations of the Complaint herein, avers that at the present time no fair and just apportionment of the Senatorial Districts comprising the Senate of the General Assembly of Tennessee and no fair and just apportionment of the Direct Representatives comprising [fol. 136] the House in the General Assembly of Tennessee exists in accordance with the Federal Census of 1950. Plain-

tiff therefore desires to present for the consideration of the Court a proposal for proper representation by Senators and Representatives in the Tennessee General Assembly in accordance with the Federal Census of 1950. It is the special purpose of Plaintiff to join with the other Plaintiffs in showing to the Court the gross inequalities being practiced upon the majority of the citizens and qualified voters of the City of Chattanooga, Tennessee and of the State of Tennessee by reason of the present apportionment of the Tennessee Legislature.

Wherefore, Premises Considered, Plaintiff Prays:

1. That it be granted leave of Court to intervene in this cause as a Plaintiff and be granted such rights as it may be entitled to have as a Plaintiff in presenting the cause of citizens and residents of the City of Chattanooga, Tennessee.

2. Grant general relief.

E. K. Meacham, Attorney for Plaintiff, 324 Hamilton Bank Building, Chattanooga 2, Tennessee.

Of Counsel: J. W. Anderson, City Attorney, Chattanooga, Tennessee.

Duly sworn to by E. K. Meacham, jurat omitted in printing.

[fol. 137] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE

[Title omitted]

ORDER ALLOWING BEN WEST PERMISSION TO FILE INTERVENING COMPLAINT AND TO BECOME A PARTY PLAINTIFF—November 23, 1955

In this cause, Ben West, Mayor, City of Nashville, Tennessee, having moved the Court to be allowed to intervene in the above entitled action as a party plaintiff thereto and to file an intervening complaint on behalf of himself and

all residents of the City of Nashville, Davidson County, Tennessee, and it appearing to the Court that Ben West, Mayor, has an interest in the above entitled action,

It is hereby Ordered that the intervening plaintiff, Ben West, Mayor, be allowed to file his intervening complaint and become a party plaintiff in this cause. The motion to dismiss the complaint heretofore filed on behalf of the defendants will be allowed to stand as a motion to dismiss to all intervening complaints.

John D. Martin, Marion S. Boyd, William E. Miller, U. S. Judges.

Hobart Atkins, Chandler, Manire & Chandler, Denney, Leftwich & Osborn, Attorneys for Plaintiffs.

Allison B. Humphrey, Attorney for Defendants, Solicitor General of the State of Tennessee.

Z. T. Osborn, Jr., Harris A. Gilbert, Special Counsel for City of Nashville.

Robert H. Jennings, City Attorney, City of Nashville, Tennessee.

[fol. 138] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE

[Title omitted]

INTERVENING COMPLAINT OF BEN WEST, MAYOR, CITY OF NASHVILLE, TENNESSEE—Filed April 4, 1960

The intervener above named, in response to Resolution unanimously adopted by the City Council of the City of Nashville by leave of Court first had and obtained, files this, his Complaint of Intervention against the above named defendants, and says:

I.

Charles W. Baker, et al., the original plaintiffs herein, filed their complaint herein against the defendants, on or

about April 1959, alleging the original jurisdiction of this action to be in this Court by virtue of the Civil Rights Act, 42 U.S.C., 1983 and 1988, and 28 U.S.C., Sec. 1343, and further alleging that special provision is made for the relief sought by 28 U.S.C. 2281, et seq. The plaintiffs alleged themselves to be qualified voters of Tennessee and the defendants to be those officials of the State of Tennessee holding and representative of those holding elections in Tennessee, and particularly for office in the General Assembly of Tennessee; plaintiffs pleaded provisions of the [fol. 139] Constitution of the United States and of the State of Tennessee, guaranteeing to them free and equal elections and reasonably equal representation in the General Assembly of Tennessee, and they averred that they were deprived of the right to free and equal elections and prohibited reasonably equal representation in the General Assembly of Tennessee, by virtue of an unlawful and unconstitutional Act of Apportionment of seats in the General Assembly of Tennessee, Chapter 122 of the Public Acts of Tennessee of 1901, and now constituting Sections 3-101 to 3-109 of the Tennessee Code Annotated.

Plaintiffs averred the unconstitutionality of said Act when passed, for its flaunting of those requirements of the Constitutions of the United States and the State of Tennessee, and also its invalidity for its obsolescence, because of population changes occurring within the several counties and districts of Tennessee since the enactment of said Chapter 122 in 1901. Plaintiffs described a purposeful and systematic plan to by non-action discriminate against the geographical class of persons represented by them in order that the plaintiffs be denied equal protection of the law and be deprived of their properties without due process of law, and the plaintiffs pleaded instances in which the unconstitutionally apportioned General Assembly requires the plaintiffs and others similarly situated to bear a disproportionate share of the costs of government and the services rendered by it.

In several alternative and supplementary prayers for relief the plaintiffs prayed that the defendants and others of whom they are representative, be restrained from enforcing said unconstitutional Act of Apportionment against them, and for a declaration of their rights in the premises.

II.

The defendants herein, Joe C. Carr, George H. McCanless, Jerry McDonald, Dr. Sam Coward, James Alexander, and Hubert Brooks, filed their motion to dismiss the original action herein on the day of 1959.

[fol. 140] III.

The Honorable William E. Miller, District Judge, on the 31st day of July, 1959, filed an order and opinion denying the motion of the defendants to dismiss the original action without taking steps to constitute a Court of three Judges, and further, notifying the Chief Judge of the Sixth Circuit Court of Appeals of the pendency of the action. Thereafter, a constitution of a Court of three Judges under 28 U.S.C.A., Section 2281 was ordered by the Chief Judge.

IV.

Ben West, Mayor of the City of Nashville, acting on behalf of all the residents of the City of Nashville, Davidson County, Tennessee, intervening plaintiff, respectfully represents as follows:

1. That this Court has original jurisdiction of this action, and that the plaintiff has the right to bring this suit under the Civil Rights Act, 17th Stat. L. 13, and 16 Stat. L. 144; U.S. Code, Title 42, Secs. 1983 and 1988, as follows:

"Section 1983. Civil Action for Deprivation of Rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at laws, suit in equity, or other proper proceeding for redress." (R.S. Sec. 1979)

"Section 1988. Proceedings in vindication of civil rights.

The jurisdiction in a civil and criminal matters conferred on the district courts by the provisions of this

chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, * * *"

Additionally, this Court has jurisdiction under 62 Stat. L. 932, 28 U.S.C. Section 1343 (3) and 1343 (4). This section reads as follows:

[fol. 141] "Section 1343. Civil rights and elective franchise.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: * * *

* * * * * * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. As amended Sept. 3, 1954, c 1263, § 42, 68 Stat. 1241; Sept. 9, 1957, Pub. L. 85-315, Part III, § 121, 71 Stat. 637.

V.

That, under 62 Stat. L. 968; 28 U.S.C. 2281 et seq. special provision is made for hearing causes of action involving restraining the enforcement, operation or execution of any state statute by restraining the action of any officer of such state whenever said application is based on the unconstitutionality of such statute.

VI.

That the intervening plaintiff is a citizen of the United States and of the State of Tennessee, and is a qualified voter, taxpayer and father of children in the public school

system of the State of Tennessee, and is entitled to vote for the members of the Legislature of the State of Tennessee.

That further the plaintiff is Mayor of the City of Nashville, Tennessee, and was authorized by the City Council of [fol. 142] the City of Nashville, Tennessee, on November 3, 1959, by resolution attached hereto and made "Exhibit 1", to bring this action on behalf of all of the residents of the City of Nashville, who are residents of Davidson County, Tennessee. The population of the City of Nashville as of the 1950 Census was 174,307, and all residents of the City of Nashville are residents of Davidson County, Tennessee. That the City of Nashville, Tennessee is the capital of the State of Tennessee and the second largest city in the state.

That the aforenamed plaintiff brings this action on his own behalf and on behalf of all other voters in the State of Tennessee.

VII.

That the defendants are all citizens of the United States and of the State of Tennessee and reside within the said State. In Particular:

Defendant, *Joe C. Carr*, is the duly elected, qualified and acting Secretary of State of the State of Tennessee, with his office in Nashville in said State, and as such he is charged with the duty of furnishing blanks, envelopes and information slips to the County Election Commissioners, certifying the results of elections and maintaining the records thereof; and he is further ex officio charged, together with the Governor and the Attorney General, with the duty of examining the election returns received from the County Election Commissioners and declaring the election results, by the applicable provisions of the Tennessee Code Annotated, and by Chapter 164 of the Acts of 1949, inter alia.

Defendant, *George F. McCanless*, is the duly appointed and acting Attorney General of the State of Tennessee, with his office in Nashville in said State, and is charged with the duty of advising the officers of the State upon the law, and is made by Section 23-1107 of the Ten-

nessee Code Annotated a necessary party defendant in any declaratory judgment action where the constitutionality of statutes of the State of Tennessee is attacked, and he is ex officio charged, together with the Governor and the Secretary of State, with the duty of declaring the election results, under Section 2-140 of the Tennessee Code Annotated.

[fol. 143] Defendant, *Jerry McDonald*, is the duly appointed Coordinator of Elections in the State of Tennessee, with his office in Nashville, Tennessee, and as such official, is charged with the duties set forth in the public law enacted by the 1959 General Assembly of Tennessee creating said office.

Defendants, *Dr. Sam Coward*, *James Alexander*, and *Hubert Brooks* are the duly appointed and qualified members constituting the State Board of Elections, and as such they are charged with the duty of appointing the Election Commissioners for all the counties of the State of Tennessee, the organization and supervision of the biennial elections as provided by the Statutes of Tennessee, Chapter 9 of Title 2 of the Tennessee Code Annotated, Sections 2-901, et seq.

That this action is brought against the aforenamed defendants in their representative capacity, and that said Election Commissioners are sued also as representatives of all of the County Election Commissioners in the State of Tennessee, such persons being so numerous as to make it impracticable to bring them all before the Court; that there is a common question of law involved, namely, the constitutionality of Tennessee laws set forth in the Tennessee Code Annotated, Section 3-101 through Section 3-109 inclusive; that common relief is sought against all members of said Election Commissions in their official capacities, it being the duties of the aforesaid County Election Commissioners, within their respective jurisdictions, to appoint the judges of elections, to maintain the registry of qualified voters of said County, certify the results of elections held in said County to the defendants State Board of Elections and Secretary of State, and of preparing ballots and taking

other steps to prepare for and hold elections in said Counties by virtue of Sections 2-1201, et seq. of Tennessee Code Annotated, and Section 2-301, et seq. of Tennessee Code Annotated, and Chapter 164 of the Acts of 1949, inter alia.

[fol. 144] VIII.

That plaintiff and others similarly situated are now denied the right to equal suffrage in free and equal elections, which right is granted them by the Constitution of the State of Tennessee, and the equal protection of the laws, as guaranteed by both the Constitution of the State of Tennessee and by the Fourteenth Amendment to the Constitution of the United States, and he brings this action on his behalf and on behalf of all qualified voters of the State of Tennessee who are similarly situated, under Chapter 11 of Title 23 of the Tennessee Code Annotated, Sections 23-1101, et seq., and under the Federal Declaratory Judgment Act, 28 USCA 2201-2202, which reads as follows:

"2201. Creation of remedy. In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. June 25, 1948, c. 646. 62 Stat. 964; May 24, 1949, c. 139, s 111, 63 Stat. 105; Aug. 28, 1954, c. 1033, 68 Stat. 890; July 7, 1958, Pub. L. 85 508 s 12 (P) 72 Stat. 349.

"2202. Further Relief. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. June 25, 1948, c. 646, 62 Stat. 964.

Plaintiff asks for a declaration of his rights and others similarly situated and a declaration of the validity or invalidity of the public acts or statutes which apportion the representatives and senators among the counties of the

State of Tennessee, and for such injunctive relief as may be proper to assure them and all other voters of the State of Tennessee free and equal franchise and equal protection of the laws which are now and have been for many years [fol. 145] denied them by the defendants and their predecessors in office who have complied with certain unconstitutional statutes, all of which are particularly set forth herein, and who have failed to comply with the Constitution of the State of Tennessee.

IX.

That Article 14, Sections 1 and 2 of the United States Constitution provides, in part, as follows:

> 1. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."
>
> 2. "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

These provisions of the Constitution of the United States contains a guarantee to the citizens of the right to vote in state elections and that their votes shall be equally effective with any other votes cast in said state elections.

X.

That the Constitution of the State of Tennessee establishes, defines and guarantees to these plaintiffs, as well as to all other voters of the State of Tennessee, free and equal suffrage in free and equal elections by virtue of:

[fol. 146] (1) Section 5 of Article I established the rights of these plaintiffs and all other qualified voters of Tennessee to free and equal elections and suffrage:

> "Sec. 5. That elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon a conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by a Court of competent jurisdiction."

(2) Section 1 of Article IV defines qualified voters who are guaranteed the right to free and equal elections and suffrage in Section 5 of Article I, supra:

> "Section 1. Every person of the age of twenty one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein such person may offer to vote for three months, next preceding the day of election, shall be entitled to vote for electors for President, and Vice-President of the United States, members of the General Assembly and other civil officers for the county or district in which such person resides; and there shall be no other qualification attached to the right of suffrage."

(3) Sections 3, 4, 5 and 6 of Article II define the term "General Assembly" as used in said Constitution, prescribe the method by which its members shall be chosen and set out a formula which must be applied every ten years in apportioning the members of the General Assembly among the counties of the State in accordance with the number of qualified voters residing in each of the counties respectively:

> "Sec. 3. The Legislative authority of this state shall be vested in a General Assembly which shall consist of

a Senate and House of Representatives, both dependent on the people; who shall hold their offices for two years from the day of the general election.

"Sec. 4. An enumeration of the qualified voters, and an apportionment of the Representatives in the General Assembly, shall be made in the year one thousand eight hundred and seventy-one, and within every subsequent term of ten years."

[fol. 147] "Sec. 5. The number of Representatives shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each, and shall not exceed seventy-five, until the population of the State shall be one million and a half, and shall never exceed ninety-nine; provided, that any county having two-thirds of the ratio shall be entitled to one member."

"Sec. 6. The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each, and shall not exceed one-third the number of Representatives. In apportioning the Senators among the different counties, in the apportionment of members of the House of Representatives, shall be made up to such county or counties in the Senate as near as may be practicable. When a district is composed of two or more counties they shall be adjoining, and no counties shall be divided in forming a district."

The intent and purpose of the aforesaid provisions of the said Constitution is that the members of the legislature must be elected by the people of the State of Tennessee on a basis of fair and equal representation of the individual electors in said State and that said senators and representatives must be equally apportioned throughout the State in districts which are arranged in proportion to the qualified voters therein. The intent and purpose of said provisions is that the Senate and House of Representatives both are dependent upon the people.

XI.

That the plaintiff, as a citizen of the United States, and of the State of Tennessee, has the right conferred by the Constitution of the State of Tennessee to have the entire membership of the Tennessee Legislature reapportioned and elected on the basis of the 1950 Federal Census, or the 1960 Federal Census, whichever may be applicable at the time of the final decree in this cause.

[fol. 148] That Sections 8 and 16 of Article XI of the Constitution of the State of Tennessee guarantees the rights of this plaintiff and all other qualified voters of the State of Tennessee to equal suffrage in free and equal elections as established in Section 5 of Article I and defined in Section 1 of Article IV, Sections 3, 4, 5 and 6 of Article II and Section 5 of Article I by denying to the Legislature the power to grant special privileges and extraordinary rights to the residents of individual counties.

> "Sec. 8. The Legislature shall have no power to suspend any general law for the benefit of individuals, inconsistent with the general laws of the land, nor to pass any law granting to any individual or individuals rights, privileges, immunities, or exemptions, other than such as may be, by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law."

> "Sec. 16. The declaration of rights hereto prefixed, is declared to be a part of the Constitution of this State, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the Bill of Rights contained is excepted out of the general powers of the government, and shall forever remain inviolate."

XII.

That the last reapportionment of the senatorial and representative districts followed the 1900 Federal Census and was established by Chapter 122 of the Public Acts of Tennessee of 1901; this chapter now constitutes Sections 3-101 to 3-109 of the Tennessee Code Annotated. There have been five Federal enumerations of the population of

the State of Tennessee since 1900, namely, 1910, 1920, 1930, 1940, and 1950. All of the Tennessee Legislatures after each such enumeration have been under a constitutional mandate in accordance with their oaths of office to support the Con- [fol. 149] stitution of the United States and Constitution of the State of Tennessee, described by Article II, Sections 3, 4, 5 and 6, of the Tennessee Constitution, to reapportion said senatorial and representative districts in accordance with the result of the latest available enumeration. Since the Federal Census of 1910, there have been numerous regular and extra sessions of the Tennessee Legislature; however, each and every such Legislature, including the present Legislature up to the time of the issuance of this complaint, despite repeated demands from its membership and despite the repeated introduction of bills which would correct the abuses complained of, has failed to reapportion and readjust the boundaries of said districts, all in violation of the Constitution of the United States and Constitution of the State of Tennessee.

XIII.

That since the 1870 Constitutional Convention and the constitutional apportionment of 1871, the Legislature of the State of Tennessee reapportioned itself three times, to wit, in the years 1881, 1891, and 1901. But, since 1901, no Legislature of the State of Tennessee has ever reapportioned itself, pursuant to the mandate of Article 2, Sections 3, 4, 5 and 6 of the Tennessee Constitution, or otherwise, except that certain minor modifications in the 1901 Legislature Apportionment Act were made in some subsequent years to adjust the boundaries of certain individual districts in a manner not material to this proceeding.

XIV.

That the plaintiff, as a citizen of the United States and the State of Tennessee, possesses the inherent right to vote [fol. 150] for members of the State Legislature and to cast votes that are equally effective with the votes of every other citizen of said State, that said rights are both recognized and guaranteed by the Constitution of the United

States and the Constitution of the State of Tennessee, but that, because of the population changes since 1900, and the failure of the Legislature to reapportion itself since 1901, the plaintiff's vote, and the votes of all other citizens of Davidson County, and others similarly situated are not as effective as the votes of the voters residing in other senatorial and representative districts in the State of Tennessee, and not as effective as would be if the Legislature had reapportioned itself as required by the Constitution. The population of the State of Tennessee in 1900, based on the Federal Census of that year, was 2,021,000, while the population in 1950, based on the Federal Census of that year, was 3,292,000, and that the growth of the various counties of the State during this fifty year period has been very uneven.

XV.

That the last Reapportionment Act, Public Chapter 122 of the Acts of 1901, was invalid and violative of those provisions of the Constitution of Tennessee and of the United States heretofore quoted, in that prior to the enactment thereof the General Assembly of Tennessee made no enumeration of the qualified voters of Tennessee, as required by Article II, Section 4, of the Constitution of Tennessee, and as necessary for compliance with Amendment 14, Section 2, of the United States Constitution, and further in that the apportionment of Representatives and Senators, as provided in said Chapter 122, was made without reference to and despite the geographical location of the residences [fol. 151] of the qualified voters of the State of Tennessee, as reflected in the Federal Census of 1900; that apportionment of seats in the General Assembly made by said Chapter was wholly arbitrary, discriminatory, and, indeed, based upon no lawfully pertinent factor whatever.

XVI.

That the said Reapportionment Act of 1901, as amended, is unconstitutional because:

Said Act denies to Davidson County the additional number of Representatives and Senators to which Davidson

County is entitled and upon which the plaintiff, Ben West, Mayor, and his fellow voters are entitled to vote by virtue of the fact that Davidson County has had a sufficient number of qualified voters since prior to 1950 to entitle it to the additional members, as shown by Exhibit "A" and "B" attached to the original complaint and made a part hereof by reference.

The Senatorial districts and counties, as they were fixed by the Act of 1901, as amended, and from which the members of the Senate and House of Representatives in the General Assembly are elected, are not divided in accordance with the number of voters in each of the counties and districts, as is illustrated by Exhibits "C" and "D" attached to the original complaint and made a part hereof by reference and therefore, the distribution of Senators and Representatives is arbitrary and contrary to the provisions of the Tennessee Constitution; that plaintiff, and others similarly situated, suffer a debasement of their votes by virtue of the incorrect, arbitrary, obsolete and unconstitutional apportionment of the General Assembly, and that he, and all others similarly situated, thereby are denied an equal [fol. 152] right to suffrage in free and equal elections and equal protection of the laws required by the Constitution of the State of Tennessee in Section 5 of Article 1, and in Sections 3, 4, 5 and 6 of Article II and Sections 8 and 16 of Article XI thereof.

Because of a purposeful and systematic plan to discriminate against a geographical class of persons and deny them due process of law and the equal protection of the law, this plaintiff and others similarly situated, are denied the equal protection of the laws and due process of law accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes

XVII.

That the preceding paragraph is illustrative of the discrimination now made among the various electoral districts of the State of Tennessee; that when all inequalities are taken together, the violations of the particular constitutional provisions set out above and as shown in Exhibits

"C" and "D" result in a distortion of the constitutional system as established, defined and guaranteed by the Constitution of the State of Tennessee and the Fourteenth Amendment to the Constitution of the United States; that this distortion of our system of electing representatives to the General Assembly prevents it, as it is now composed, from being a body representative of the people of the State of Tennessee, since a minority of approximately 37 percent of the voting population of the State now controls twenty of the thirty-three members of the senate, as shown by Exhibit "E" attached to the original complaint and made a [fol. 153] part hereof by reference and that thus a minority now rules in Tennessee by virtue of its control of both Houses of the General Assembly, contrary to the basic principle of representative government as set out in the Constitution of the State of Tennessee in Section 1 of Article I, "That all power is inherent in the people and all free governments are founded on their authority and instituted for their peace, safety and happiness, for the advancement of those ends they have at all times an inalienable and indefeasible right to alter, abolish or reform the government in such manner as they think proper", and contrary to the philosophy of government and jurisprudence in the United States in which the Legislature has the power to make law only because it has the power and the duty to represent the people, and contrary to the Constitution of the State of Tennessee, Art. 2, Section 3, wherein it is provided that the Legislative authority is dependent upon the people.

XVIII.

The constitutional requirements of the State of Tennessee can only be met by a distribution of the representatives and senators among the counties of the State of Tennessee in accordance with their respective qualified voters, and the proper distribution of such representatives and senators may be provided mathematically by applying the constitutional formulae to the figures taken from the United States Census of 1950 showing the population of each County of the State of Tennessee, as approximately shown in Exhibits "A" and "B" attached to the original complaint and made a part hereof by reference.

XIX.

On information and belief, plaintiff avers that, for the purpose of informing the members of the 81st General [fol. 154] Assembly of Tennessee of the intentions of the original plaintiffs to seek reapportionment of the Legislature as is herein sought, the original plaintiffs, through their authorized attorneys at law, shortly after the convening of the 81st General Assembly of Tennessee, in January, 1959, addressed to each member of the Senate and House of Representatives and mailed same to the mail addresses of all of said Senators and Representatives, the following letter:

"Dear (Senator or Representative):

A number of citizens of Tennessee, especially interested in the proper apportionment of the Tennessee Legislature in accordance with the provisions of the State Constitution, have engaged attorneys at law to institute legal proceedings in the Federal Court if the present Tennessee Legislature does not enact legislation in conformity with the constitutional formula for reapportionment and the undersigned are among the attorneys engaged for this purpose.

We feel that it is proper to notify you, as a member of the 1959 General Assembly, of the contemplated institution of this suit for reapportionment, which will be based, in material part, on the failure of the present legislature to carry out the mandate of our Constitution. We wish to assure you that there is nothing personal in our approach, as counsel, to the proper solution of this long standing problem, but we feel that you should have knowledge beforehand of the plan referred to in order to take appropriate action before the adjournment of the present legislature.

With every good wish,

Yours very truly,

/s/ Walter Chandler
Hobart Atkins

[fol. 155] XX.

That the 81st General Assembly of Tennessee adjourned on the 20th day of March, 1959, without passing any bill or resolution to reapportion itself in conformity with the Constitution of Tennessee, although a number of bills or resolutions for such purpose were introduced during said session, and the following bills were voted on and defeated by recorded votes:

Senate Bill No. 524, to reapportion the Tennessee General Assembly, failed of passage in the Senate by a vote of 14 Ayes and 18 Noes. A transcript of the Journal of the Senate showing the action taken on said bill will be introduced at the hearing hereof.

Senate Bill No. 598, to reapportion the Tennessee Legislature in accordance with the Constitutional formula, failed of passage in the Senate by a vote of 13 Ayes and 20 Noes. A copy of said bill and a transcript of the journal of the Senate showing the action taken thereon is annexed to the original complaint as Exhibit "G" and made a part hereof by reference.

House Bill No. 760, a companion bill of Senate Bill No. 598, to reapportion the Tennessee General Assembly, failed of action in the House of Representatives.

House Joint Resolution No. 76, to direct the Legislative Council "to make a study of the steps taken by other states in recent years to reapportion the membership of their legislative bodies among the several counties or districts of said states," failed of passage in the House of Representatives by a vote of 37 Ayes and 54 Noes.

That by failing to pass the bills or adopting the resolution hereinabove mentioned, and by failing to enact a proper reapportionment law for the Legislature of 1961, as re- [fol. 156] quired by the provisions of the Constitution of Tennessee hereinabove cited, the 81st General Assembly of Tennessee continued the purposeful and systematic plan to discriminate against a geographic class of persons represented by the qualified voters enumerated in the Federal Census of 1950, thereby violating their solemn oaths to support the Constitution of Tennessee and the Constitution of the United States of America.

That by reason of the aforesaid failure of the 81st General Assembly of Tennessee to reapportion the legislative districts of the State in conformity with the Constitution of Tennessee, thus violating the constitutional rights of these plaintiffs and depriving them and others of due process and the equal protection of the laws, as hereinabove set forth, a serious justiciable controversy has arisen. The intervening plaintiff further states that neither the Constitution nor Statutes of the State of Tennessee provide for an initiative or referendum to correct the abuses complained of; nor does the Executive Branch have the power to correct said abuses. That the same laws of Tennessee as involved in the instant cause were before the Tennessee Supreme Court, the highest court in the state, in the cause of *Kidd* vs. *McCanless*, 200 Tenn. 273, 292 S.W. 2d. 40, Appeal Dismissed, 352 U. S. 920, 1 L. Ed. 2d, 157, 77 S. Ct. 223, but the Supreme Court of Tennessee refused to grant any equitable relief which would correct said abuses.

The historical summary of the failure of the Legislature to reapportion itself as prepared by the State Historian of the State of Tennessee, Dr. Robert White, is herewith attached and made Exhibit "2" of this Complaint. Plaintiff further avers that in view of the foregoing that all remedies [fol. 157] and forms of relief that are available to him through the Executive, Legislative and Judicial Branches of the Government of the State of Tennessee under its Constitution have been exhausted. Therefore, intervening plaintiff, Ben West, avers that he and others similarly situated have no possible remedy or relief except as may be awarded by this Honorable Court.

XXI.

That the defendants, or their successors in office, unless prevented by this Court, will perform their duties as they and their predecessors in office have performed those duties for over fifty years under the unconstitutional Act of 1901, and the rights of this plaintiff and all other qualified voters of Tennessee similarly situated, can be protected only by decree of this Court declaring the Act of 1901, together with all Acts amending it, to be unconstitutional, and by

enjoining the defendants from holding another unconstitutional election in 1960, or thereafter, and by requiring either:

(a) that the defendants exercise their respective duties and prepare for the election of 1960, or subsequent elections as may be applicable, in such manner that the election will be held at large over the State as a whole, whereby every qualified voter shall have the right to vote for every member of the Senate and House of Representatives to be elected to the 1961 General Assembly, or subsequent General Assemblies as the circumstances may require, or

(b) That the defendants obey a decree of this Court redistricting the State by mathematically applying the formulae set out in the Constitution by referring to the 1950 official Federal Census population figures of the various counties of the State, or later Federal Census as may be applicable, unless and until the General Assembly of the State of Tennessee, by proper law, reapportions constitutionally the representatives and senators among the counties of the State.

[fol. 158] XXII.

That the General Assembly of Tennessee, for a number of years, has denied to plaintiffs and others similarly situated the equal protection of the laws by unjustly discriminating against large segments of the population of the State in the allocation of the burdens of taxation and in the unequal and unjust distribution of funds derived by the State through the exercise of the taxing power, as represented by statutes passed to raise and distribute revenue, notably for the support of the public schools of the State, counties, municipalities, and school districts, and for the maintenance of roads and highways, and for other purposes; that the said General Assembly, over a period of years, enacted and has maintained an arbitrary, unreasonable and discriminatory formula for the making of contributions to the needs of County governments, in that, of the seven cents (7¢) collected by the State for the storage and sale of each gallon of gasoline, "a sum equal to that derived from the levy of two cents for each gallon" is paid into a separate fund

known as "County Aid Funds." Section 54-403 of the Tennessee Code Annotated providing for the distribution of this fund in the following language:

> "Said 'county aid fund' so derived from the two cents (2¢) gasoline privilege tax, shall be derived and distributed by the department of highways and public works to the various counties of the state as follows: One-half (½) of said fund shall be distributed equally among the ninety-five (95) counties of the state, and fifty per cent (50%) of the balance shall be distributed among the ninety-five (95) counties on the basis of area and fifty per cent (50%) on basis of population, as of the most recent federal census, and shall be paid over monthly by the director of accounts of the state to the various county trustees, to be used by the county highway authorities in the building, repairing and improvement of county roads and bridges * * * ";

[fol. 159] That distribution formula just above quoted works to take all but a small percentage of the gasoline tax paid by residents of Davidson County, situs of the City of Nashville, from them and distribute the same to those counties having an excessive and disproportionate representation in the unlawfully constituted General Assembly By application of this same formula to those funds collected by the United States of America for aid to the systems of roads maintained by the State, said unlawfully constituted General Assembly arbitrarily, unreasonably and discriminatorily distributes Federal funds excessively and disproportionately to those counties having excessive and disproportionate representation in the General Assembly. Section 54-611 makes a specific provision for the use of this formula insofar as Federal matching funds are concerned:

> "54-611. *Use, allocation and matching of federal funds—Formula.*—All funds provided for the federal aid secondary system of roads in this state by the federal aid secondary act of 1944 (Public Law 521, 78th Congress) and all amendments thereto and all funds hereafter allocated to said state system of rural roads by the commissioner of highways, with the approval of

the governor, from funds appropriated for or made available to the department of highways under existing laws or laws which may hereafter be passed, shall be expended by said rural roads division for the establishment and construction of roads and bridges on said state system of rural roads.

"The department of highways shall out of the funds allocated to the state system of rural roads first match the federal funds available under the federal aid secondary road program as now allocated to the various counties and the remainder of such funds so set aside and allocated to the state system of rural roads shall be expended in the various counties of the state upon the [fol. 160] state system of rural roads by the same formula upon which the two cent (2¢) gasoline tax is at the present time allocated to the various counties."

That by Public Chapter No. 14 enacted by the 1959 General Assembly, provision was made for the distribution of the taxes collected in support of the educational system of the State, whereby the pattern established in previous years by said unlawfully apportioned general assemblies has been continued by fixing first what purports to be a formula whereby each county's and city's ability to contribute to the education of the children therein is determined, and thereinafter exempting by proviso those over-represented counties from all application of the formula and guaranteeing to them school funds in the amounts previously had by such counties, despite their failure to contribute to their own educational systems on the basis required by said formula for the counties in which plaintiffs and others similarly situated live. A certified copy of said Act is attached hereto as Exhibit "3" and made a part hereof.

That, in the allocation of sales and use taxes, alcoholic beverage taxes, income taxes, beer taxes, and other taxes levied on the people of the State of Tennessee by such unlawfully apportioned General Assemblies, the discriminations provided in said statutes have been made possible and effective by the failure or refusal of the Legislatures of the State of Tennessee to follow the mandates of the State Constitution requiring the reapportionment of the General

Assembly in each ten years after the year 1900. That said unlawfully apportioned General Assemblies will continue to refuse and fail to follow the mandates of the State Constitution because of the taxation benefits obtained by the systematic, continued and purposeful plan of discrimination hereinbefore set forth.

[fol. 161] Wherefore, Premises Considered, the intervener respectfully prays that this intervening complaint be filed, and that the intervener's rights be declared in the premises, to-wit:

A. That the present legislative apportionment of the State of Tennessee has deprived and continues to deprive the plaintiffs of liberty and property without due process of law, and has denied and continues to deny the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

B. That Sections 3-101 to 3-109, inclusive, of the Tennessee Code Annotated, are void and invalid as being contrary to the Fourteenth Amendment of the Constitution of the United States, and the Constitution of the State of Tennessee, because of the failure to reapportion the legislative districts of the State of Tennessee in accordance with present qualified voters as herein averred.

C. That the right of the plaintiffs to vote as guaranteed by Article 1, Section 5, and Article 4, Section 1, of the Constitution of the State of Tennessee has been impaired.

And Plaintiffs further particularly pray that, after hearing of this action, the Court grant further relief in accordance with 62 Stat. L. 964, 28 U. S. C. Section 2202 as follows:

D. For the entry of a judgment declaring it to be the right of the plaintiff and others similarly situated to have the legislative authority of Tennessee vested in a General Assembly consisting of a Senate and House of Representatives dependent upon the people of Tennessee, as provided in Section 3 of Article II of the Constitution of Tennessee, [fol. 162] consisting of ninety-nine members in the House and thirty-three members in the Senate, and that this right had by the plaintiff and others, citizens of Tennessee, is in no way dependent upon action or non-action by any past

or future General Assembly, but instead is based and depends upon that Constitution had by the people of Tennessee.

E. And the plaintiff prays further that his right in said Legislature be declared to exist despite the purposeful and systematic plan of refusal to act in the apportionment of said seats in the Legislature by those General Assemblies serving since the year 1901 and that, for the failure of those General Assemblies so serving to make a constitutional apportionment of said General Assembly seats, the same is and shall remain unapportioned, unless and until the General Assembly enacts an Act of Apportionment in accordance with the requirements of the Constitution of the United States and of the State of Tennessee, and that, pending such Act of Apportionment, plaintiff and all of the citizens of Tennessee be allowed an exactly equal voice in the election of members of the General Assembly through elections at large.

F. For an injunction restraining and prohibiting the defendants from enforcing Sections 3-301 to 3-309, inclusive, of Tennessee Code Annotated, against the intervenor and others similarly situated, by furnishing forms for nominations, receiving nomination petitions and papers, certification of nominations of election, or any other act necessary to the holding of elections for members of the General Assembly of Tennessee, as apportioned by said invalid Code Sections.

[fol. 163] Or, in the Alternative,

That the defendants, and each of them, be restrained and prohibited from doing any act necessary to the holding of elections for members of the Tennessee Legislature other than from counties and districts to which seats in the General Assembly are apportioned, in accordance with that mathematical formula of apportionment expressed in the Constitution of Tennessee.

G. For such other and further relief as may seem just, equitable and proper.

This is the first application for extraordinary process in this cause by the intervening plaintiff.

Ben West, Mayor of Nashville.

Robert H. Jennings, Jr., City Attorney for the City of Nashville; Harris Gilbert, Special Counsel to the City Attorney; Denney, Leftwich & Osborn, Special Counsel to the City Attorney.

[fol. 164] *Duly sworn to by Ben West, jurat omitted in printing.*

[fol. 165]

EXHIBIT 1 TO INTERVENING COMPLAINT

– CITY COUNCIL RESOLUTION 59-198

AUTHORIZING THE MAYOR OF THE CITY OF NASHVILLE TO INTERVENE AND PARTICIPATE IN THE CASE BAKER, ET AL., vs. CARR, ET AL., PENDING IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, AND HAVING AS ITS OBJECT THE REAPPORTIONMENT OF THE GENERAL ASSEMBLY OF TENNESSEE.

WHEREAS, no Act of Apportionment of the General Assembly of Tennessee has been enacted since 1901 A.D., despite the requirements of the Constitution of Tennessee that the General Assembly be apportioned among the qualified voters of the State equally at ten-year intervals, and

WHEREAS, the Apportionment Act of 1901 worked to deprive Davidson County and the citizens of Nashville, Tennessee, of a portion of the representation previously had by it, although the qualified voters of this community were then entitled to increased representation in the General Assembly and the almost sixty years which have passed have worked to further debase the electoral franchise had by the citizens of Nashville and Davidson County, Tennessee, in that the population of this community has steadily increased, and

WHEREAS, representation in the General Assembly is now so grossly unequal that in some instances voters of one County have as much as twenty times the representation as is had by the voters and citizens of Nashville, David-

son County, Tennessee, whereby the citizens and voters of this County and others similarly situated are deprived of the equal protection of the laws, and

[fol. 166] WHEREAS, the debasement of the right to vote had by the people of Nashville, Tennessee, and other areas in Tennessee similarly situated, is such that said Apportionment Act of 1901 now requires that less than 40% of the people of Tennessee elect 66⅔% of the House of Representatives, while one-third of the people of Tennessee elect two-thirds of the State Senate, and said Act prohibits the election of a General Assembly representative of a majority of the people of Tennessee, and, is, therefore, wholly unfair, undemocratic and absolutely unconstitutional, and

WHEREAS, that unlawfully constituted majority of the General Assembly has exercised its unconstitutional authority over the citizens of Nashville and other areas similarly situated, by requiring an unequal sharing in the cost of government in Tennessee, to the point that the metropolitan areas of Tennessee are required to overburden their citizens and taxpayers with taxation, while many rural communities pay all but a nominal part of their governmental expense out of the taxes collected by the State of Tennessee in said metropolitan communities, and

WHEREAS, there is no apparent relief in sight from the taxation without representation presently existing in Tennessee, and the disproportionate expense of government now borne by the citizens of Nashville will in all probability be increased unless some relief is found, and

WHEREAS, the people of the City of Nashville are deprived of any political remedy, in that they are not per-
[fol. 167] mitted to vote for or against that absolute majority of the General Assembly apportioned to the over-represented areas of the State of Tennessee, and

WHEREAS, a group of City and County officials and individual citizens of Tennessee have sought relief in the United States District Court at Nashville, in the case Baker, et al. v. Carr, et al., and in their cause seek a declaration of

the invalidity of the Apportionment Act of 1901 and a reapportionment of the General Assembly of the State of Tennessee, and

WHEREAS, the people of Nashville and Davidson County, Tennessee would benefit financially and would with all others in Tennessee benefit by an enforced respect for and observance of the supreme organic law of Tennessee, and it is in the best interest of the City of Nashville that the cause of the people of the City of Nashville be presented to that three Judge District Court assigned and established for the trial of said case, now, therefore,

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NASHVILLE AS FOLLOWS:

SECTION 1. That the Mayor of the City of Nashville be and he is hereby authorized to intervene and participate in said case in the United States District Court, Baker, et al., v. Carr, et al., and to take any and all necessary steps in proving the long continued mistreatment of the people of the City of Nashville at the hands of the unlawfully [fol. 168] apportioned General Assemblies of Tennessee convened pursuant to the Apportionment Act of 1901.

SECTION 2. BE IT FURTHER RESOLVED, that this Resotion take effect from and after its adoption, the welfare of the City requiring it.

Introduced By: A. D. GILLEM /s/
Member of Council

Recommended by:

BEN WEST /s/
Mayor

Approved as to form and legality:

ROBERT H. JENNINGS, JR. /s/
City Attorney

I hereby certify that this is a true and correct copy of the Original Resolution No. 59-198 of the City Council, of the City of Nashville, Tenn.

Witness my hand and the Seal of the City of Nashville, Tenn., this 12 day of November, 1959.

/s/ F. M. Carr, Jr.
City Clerk

(Seal)

[fol. 169]

Exhibit 2 to Intervening Complaint

A DOCUMENTED SURVEY OF LEGISLATIVE APPORTIONMENT IN TENNESSEE, 1870-1929

The present Constitution of Tennessee requires that an apportionment of the members of the Legislature be made every ten years, beginning in the year 1871 and every ten years thereafter.[1] The Constitution further provides that said apportionment shall be based upon the number of qualified voters in each Legislative and Senatorial District.[2]

The Thirty Seventh General Assembly convened on October 2, 1871. Five days later (October 7), Thomas H. Butler, Secretary of State, transmitted to the Legislature a Report[3] showing "the number of male inhabitants of the State, of twenty-one years of age and upwards." Secretary Butler's Report disclosed that fifteen counties had not sent in their reports. The seventy-eight counties reporting listed a total of 237,431 qualified voters. In order to give an approximate total number of qualified voters, Secretary Butler annexed to his Report the number of voters in the unreported counties in the last election for Governor, amounting to 12,594. When this figure was added to the figures of the reporting counties, the total number of qualified voters was given as being 250,025. Ten days later, Senator J. M. Coulter introduced Senate Joint Resolution No. 18 which was as follows:[4]

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[1] 1870 *Constitution of Tennessee*, Article 11, Sections 4, 5, and 6.

[2] *Ibid.*

[3] *Appendix to Senate Journal*, 1871, 41-43.

[4] *Senate Journal*, 1871, 46-47.

"Be it resolved by the General Assembly of the State of Tennessee, that in view of the short period allowed for legislation, and the vast amount of labor connected with re-districting of the State—the impossibility of doing so without the census returns of the voting population from each county, the Secretary of State be requested to use prompt measures to secure complete returns at the earliest day practicable."

[fol. 170] The Coulter Resolution was routinely adopted in each House, and approved by the Governor.[5]

On the second day of the legislative session, Representative T. H. Paine introduced House Joint Resolution No. 4 which provided for the appointment of a committee to redistrict the State.[6] The resolution was adopted by each branch of the Legislature and approved by the Governor[7] on October 17. The re-districting committee was to consist of nine members, three from each Grand Division of the State on the part of the House, and six on the part of the Senate.[8] Some five weeks later, (November 28, 1871) this Redistricting Committee submitted a redistricting bill and recommended its passage.[9]

The legislative Journals and Acts do not disclose whether the Secretary of State obtained any further reports from the fifteen delinquent counties. From the marginal entries on the manuscript copy of Secretary Butler's Report[10] it is clearly indicated that the bulk of the work of taking the voting census was performed during the summer and early fall of 1871.

The Senate Redistricting Bill No. 221, passed first and second readings in the Senate, but on December 9, House Bill No. 417 was adopted by the Senate in lieu of the Senate

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[5] *Ibid.*, 96.

[6] House Journal, 1871, 21.

[7] *Ibid.*, 86.

[8] Acts of Tennessee, 1871. Resolution VIII, 187.

[9] Senate Journal, 1871, 262.

[10] See Exhibit 1, Butlers Report.

Bill.[11] After various amendments, the Redistricting Committee Bill was passed[12] on December 11, 1871, in the Senate by a vote of 21 to 4. The House had passed[13] the bill on December 6 by a vote of 48 to 23. The bill, now enacted into law,[14] is Chapter 146, Acts of Tennessee, 1871, the title being "An Act to apportion the Senatorial and Representative Districts in the State of Tennessee."

[fol. 171] As usual, protests were registered against the passage of the apportionment law by certain members of the Legislature. Representatives Jacob Leach and James P. Doss maintained that the apportionment law was

> "A system of representation as correct in principle as that in the days of George the Third . . . We have no language to express our indignation as this maneuver. We, therefore, enter our eternal aversion to unfair representation in a free government." [15]

Representative J. C. Parker voiced his condemnation of the bill by concluding his protest with this salvo:

> "The tyranny of the majority silenced the voice of reason and the appeal of justice." [16]

The basis for census taking in 1871 was the enactment of a law[17] authorizing and directing the County Courts of each county to elect a Commissioner to take an enumeration of all male inhabitants twenty-one years of age and upwards and file same with the County Court Clerk who was directed to transmit a certified copy of same to the Secretary of State, who, in turn, was directed to present same to the Legislature. The compensation of the various commissioners

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[11] Senate Journal, 1871, 355.

[12] *Ibid.*, 368.

[13] House Journal, 1871, 365.

[14] Acts of Tennessee, 1871, Chapter 146.

[15] *House Journal*, 1871, 367.

[16] *Ibid.*, 378.

[17] *Acts of Tennessee*, 1870, Chapter 107.

was set at three dollars for each one hundred names enumerated and returned by him to the County Court Clerk. [fol. 172] The next reapportionment year was 1881. The outgoing Governor, Democratic Albert S. Marks, in his valedictory message to the Legislature reminded that body of a constitutional mandate calling for reapportionment.[18] The incoming Governor, Republican Alvin Hawkins, made no reference to apportionment in his message to the Legislature.[19]

The only legislative action by the Forty-Second General Assembly in its regular session touching reapportionment was the enactment of a law dealing with the method of taking a census of the voting population. Such a bill was introduced on February 2, 1881, by Senator Basil M. Tillman.[20] The bill was tossed back and forth for various amendments and did not obtain passage in both branches of the Legislature until April 2, 1881, five days before *sine die* adjournment.[21] The Governor approved[22] the bill on the last day of the legislative session, April 7, 1881.

The above law[23] authorized the Governor to appoint "one or more suitable persons for each county of the State, upon the recommendation of Senators and Representatives of the respective counties", to be known as Commissioners who were to make an enumeration of the voters of the requisite age and residential requirements. The compensation was set at three cents for each person enumerated and reported.

Section 4 of the above law made the following provision, to wit:

> "That said Commissioners so appointed shall have access to the U. S. Census Reports of the enumeration

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[18] Senate Journal, 1881, 128.
House Journal, 1881, 66-67.

[19] Senate Journal, 1881, 372-387.
House Journal, 1881, 462-480.

[20] Senate Journal, 1881, 291.

[21] House Journal, 1881, 895.

[22] House Journal, 1881, 995.

[23] Acts of Tennessee, 1881.

> of 1880, on file in the offices of the County Court Clerks of the State, and a reference to said reports by said Commissioners shall be legitimate as an auxiliary in the enumeration required by the provisions of this act."

[fol. 173] As is obvious, the constitutional requirement for legislative reapportionment in 1881 was not complied with by the Legislature at its regular session from January 3, 1881 to April 7, 1881.

On November 18, 1881, Governor Alvin Hawkins called the Legislature into extra session on December 7, 1881, setting forth eleven specific topics for legislative action.[24] Item No. 1 was:

> "To fix and declare the number of Senators and Representatives composing the General Assembly of the State of Tennessee, and make an apportionment of the same, as provided by secs. 4, 5, and 6, of Art 2 of the Constitution of the State."

On the opening day of the legislative session, Secretary of State David A Nunn, submitted a report showing the voting population of the State, by counties as ascertained by the census reports from the various counties. The total number[25] of qualified voters was reported as being 343,817. In view of the increase in total population of the State, as disclosed by the Federal Census of 1880, the membership of the General Assembly was increased to thirty-three Senators and ninety-nine Representatives.[26] This increase in legislative membership, though mildly disapproved by Governor Hawkins in his message, was fully warranted by the Constitution itself, in that the Federal Census of 1880 showed a total population in Tennessee in excess of "one million and a half."[27]

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[24] *Senate Journal* (First Extra Session), 1881, 3-5.

[24] *House Journal* (First Extra Session), 1881, 4-6.

[25] *House Journal* (First Extra Session), 1881, 12-14.
Note: See photostat copy of report, Exhibit No. 2.

[26] *Acts of Tennessee* (First Extra Session), 1881, Chapter 5.

[27] *Constitution of Tennessee*, 1870, Article ii, Section 5.

[fol. 174] As per the usual legislative procedure, various and sundry amendments were offered on the pending bill concerning apportionment. After all amendments were disposed of, the reapportionment bill was finally enacted into law.[28]

Inasmuch as Congressional reapportionment had been ignored by the regular session and the first extra session of the Legislature, Governor Hawkins felt impelled to call a second extra session which he did on March 16, 1882. Item No. 1, in the Governor's Proclamation, was as follows:

> "1st. Redistricting the State into ten Congressional Districts, and providing for proper representation in the Congress of the United States."

Without too much ado, Congressional apportionment was taken care of on April 27, 1882, when the bill was given the approval of the Governor.[29]

[fol. 175] In the Act of 1881, Chapter 124, it will be noted that the law providing for taking a census of the voting population differed in two respects from a similar law passed in 1870. The 1881 Act placed upon the Governor the duty of appointing the County Census enumerators rather than having that function executed by the various County Courts. A new provision was also inserted in Section 4 of the 1881 law, namely, that the Census enumerators were vested with the right of having access to the U. S. Census Reports "and a reference to said reports by said Commissioners shall be legitimate as an auxiliary in the enumeration required by the provision of this act." To what extent, if any, the census enumerations is not disclosed in Secretary of State Nunn's report to the Legislature. Furthermore, no light is shed upon this particular matter in the official legislative *Journals* of 1881.

Following the legislative precedent of 1881, the 1891 Legislature by-passed apportionment due to be made that year. Neither the out-going or in-coming Governor referred to the apportionment topics in his respective messages. But the Legislature recognized its responsibility in regard to

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[28] *Acts of Tennessee* (First Extra Session), 1881, Chapter 6.

[29] *Acts of Tennessee* (Second Extra Session), 1882, Chapter 27.

reapportionment. In the third week of its session, a law was passed providing for the taking of a census of the male inhabitants of voting age in the State.[30] "As soon as this Act becomes a law," the Governor was directed to appoint Census Commissioners in the several counties who were to take a census of the qualified voters and certify said lists to the County Court Clerk not later than February 21, 1891. The County Court Clerk was ordered to make a list of all enumerations filed with him within five days after receipt of same, and forward same to the Secretary of State. The [fol. 176] Secretary of State was instructed to present the figures "to the General Assembly now in session, or hereafter to meet." The above law embodied the same provision as found in the Act of 1881, namely:

> "That said Commissioners so appointed shall have access to the U. S. Census Reports of the enumeration of 1890, on file in the office of the County Court Clerk of the State, and a reference to said reports by said commissioners shall be legitimate as an auxiliary in the enumeration required by the provisions of this Act." [31]

On January 24, 1891, a Joint Resolution was adopted "Ordered the Secretary of State to make out necessary documents in order to carry out the sense of the Enumeration Bill." [32]

On March 21, 1891, just nine days before *sine die* adjournment, Senator Dorsey O. Thomas, Chairman of the Redistricting Committee, submitted the Report of the Census as presented by the Secretary of State. The laconic statement throws no light whatsoever upon the contents of the Census Report, namely,

> "The Secretary of State, through Mr. Thomas, the Chairman of the Redistricting Committee, submitted his report of the census, which was referred to the Redistricting Committee." [33]

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[30] *Acts of Tennessee*, 1891, Chapter 22.

[31] *Ibid.*, Section 4.

[32] *Senate Journal*, 1891, 86.

[33] *Ibid.*, 414.

[fol. 177] On the day preceding the presentation of the above report, Senator Thomas introduced Senate Bill No. 452 "To apportion the Representatives of the State of Tennessee in the Congress of the United States."[34] On March 26, the Redistricting Committee recommended the above bill for passage.[35] On March 26, House Bill 525 on the same subject was substituted for the Senate Bill, and on a third reading the following vote was recorded: Ayes 18; Noes 2. The Bill failed for lack of a quorum.[36] On the following day the bill was called up and was passed by a vote of 21 to 10.[37] On March 30, 1891, the closing day of the legislative session, the governor approved said bill which was "An Act to apportion the Representatives of the State in the Congress of the United States."[38]

Just three days before *sine die* adjournment, a supplementary report[39] of the census of qualified voters was presented to the Legislature by the Secretary of State. The "Voting Population" was given by counties, the total being 399,575.

[fol. 178] Secretary of State, C. A. Miller concluded his report with the following explanation:

> "The above is from figures officially reported to me, except the counties of Bledsoe, Lincoln and Montgomery. In Bledsoe County the two enumerators appointed refused to act. In Lincoln and Montgomery counties, the County Clerks inform me that the reports of the enumerators have not yet been returned to their offices as required by law. And the estimates of said counties are made from information furnished by the County Court Clerk in Lincoln County, and from the enumerator in Montgomery County. The estimate of Bledsoe County is made by comparison with returns

[34] *Ibid.*, 395.

[35] *Ibid.*, 443.

[36] *Ibid.*, 454-455.

[37] *Ibid.*, 463.

[38] *Acts of Tennessee*, 1891, Chapter 131.

[39] *Senate Journal*, 1891, 473-474.

> from other counties having about same population as shown by the census of 1890. I make this incomplete report because of the fact that the session is drawing near a close, and if possible to enable this session to act and save the State the large expense of an extra session. Respectfully submitted,
>
> C. A. MILLER, Sec'y State."

From the above sketch, it is obvious that legislative "delaying action" on reapportionment in 1891 may have been partially due to the tardy report of the Secretary of State, inasmuch as his report was not presented to the Legislature only three days before adjournment. Undoubtedly, he had difficulty in getting returns from the County Court Clerks, who, in turn, had to wait for census returns made by the local census enumerators. Even so, the final report was admittedly incomplete. Notwithstanding the above handicaps, the Legislature nevertheless passed a Congressional Reapportionment Act[40] at its regular session in 1891.

It is quite a different story *re* legislative apportionment. On March 21, 1891, Representative Jefferson Davis Casselberry representing Hardeman and Fayette Counties introduced House Bill No. 725 "To apportion the State in Senatorial and Representative Districts."[41] Routinely the bill passed second reading two days later and was likewise referred to the Redistricting Committee.[42] On March 25, 1891, the above committee reported as follows:

> [fol. 179] "Mr. Speaker: The Redistricting Committee have carefully considered House Bill No. 525, and report the bill, with the accompanying substitute, for passage."[43]

On March 27, 1891, the Redistricting Committee recommended for passage House Bill 725 (legislative apportionment) with an accompanying substitute.[44] Three days

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[40] Acts of Tennessee, 1891.

[41] House Journal, 1891, 402.

[42] *Ibid.*, 411.

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[44] *Ibid.*, 462.

later, March 30, the House took up House Bill 456 which was a bill dealing also with legislative apportionment.[45] Hereupon, considerable jockeying took place in the form of proposed amendments, offering a substitute bill, *et cetera.*[46]

Here is the status of the legislative apportionment business on next day to *sine die* adjournment. The Senate had passed by a vote of 22 to 8 the Senate bill to apportion Senatorial and Legislative Seats.[47] On the closing day, the House passed a substitute bill by a vote of 54 to 5.[48] Each branch had passed a *legislative* reapportionment bill, but no one bill was passed by both branches. Consequently, no reapportionment law had been enacted.

[fol. 180] In view of the fact that the Legislature had during its regular session become "fould up" over legislative apportionment and had failed to enact any law upon that matter, Governor John P. Buchanan called the Legislature into extra session[49] on August 31, 1891. Of the twelve specific items mentioned in Governor Buchanan's Proclamation, item 5 was as follows:

> "To pass an act dividing the State into representative, floterial, and senatorial districts, and apportioning Representatives and Senators among those districts as required by the Constitution." [50]

In his Message to the Legislature on the opening day, Governor Buchanan pointed out specifically that

> "The Constitution requires that the State shall be redistricted every ten years into new representative,

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[45] *Ibid.*, 485.
Author's note:
The House Journal erroneously lists the bill as No. 476.

[46] *Ibid.*, 486-487.

[47] Senate Journal, 1891, 480.

[48] House Journal, 1891, 487.

[49] Senate Journal (Extra Session), 1891, 4-5.
House Journal (Extra Session), 1891, 4-5.

[50] *Ibid.*

floterial, and senatorial districts, and that Representatives and Senators shall be apportioned according to the census. Unless this apportionment is made, great confusion may be caused, for those counties which have gained in the last census will follow the recent enumeration, while those that have lost will follow the old enumeration, and there will be no authority to decide who shall be entitled to seats in the next Legislature." [51]

[fol. 181] The Legislature did not attempt the reapportionment problem until the ninth day of the session. No valid criticism can be lodged against those members for the slight delay, due to the tense excitement incident to a serious clash between the local coal miners of Anderson County and penitentiary convicts who had been leased to a private concern which condition produced sharp competition and irritating situations. Mob violence flared up to such an extent that Governor Buchanan called out ten companies of the State militia in an effort to quell the riot. All of this had occurred about two weeks before the Legislature convened in extra session on August 31, 1891.

At this faraway date, it is perhaps a bit hazardous to attempt to diagnose the temper of this legislative body in the extra session of 1891. The coalminer riots had unquestionably disturbed the public peace. This situation called forth a long explanation on the part of Governor Buchanan who had called out the State militia[52] without legislative approval. For this action, he was accused of having violated Section 5 of Article III of the State Constitution. Another factor concerned the introduction of a batch of silly bills such as "to prevent wife beating", "to prevent the stealing of fruits from gardens," and "to prohibit prize-fighting." Perhaps this latter class of bills served as a sort of antidote to relieve the tenseness of the times on account of the coal miner revolt.

At any rate, on September 8, 1891, Senator T. C. Long of Madison County introduced Senate Bill No. 32 to appor-

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[51] Senate Journal (Extra Session), 1891, 8.
House Journal (Extra Session), 1891.

[52] Senate Journal (Extra Session), 1891, 9-22.

tion the various counties of the State into proper legislative districts.[53] On the same day, a bill on the same subject was introduced in the House by Rep. J. D. Casselberry.[54] [fol. 182] Another bill on the same subject was rejected.[55] On September 16, five days before adjournment, the Long bill was amended by striking out everything after the enacting clause and inserting a list of the counties comprising the various districts together with the number of Representatives and Senators allotted to each.[56] This amended bill was passed in the Senate by a vote of 21 to 8. The above bill was passed in the House[57] by a vote of 61 to 16.

A reapportionment law[58] had been enacted, even though a special session of the Legislature had been required to consummate that objective.

[fol. 183] In point of chronology, we now arrive at the time of the enactment of the last legislative apportionment law in Tennessee, namely, 1901. That law is Chapter 122, passed by the Legislature on April 2, 1901, and approved by Governor Benton McMillin on the following day.[59]

The opening gun relative to apportionment in 1901 was fired on January 9, by Dr. J. C. Drennan, Democratic Senator from Cannon County.[60] Senator Drennan's bill[61] provided for an enumeration of voters to be made prior to the enactment of a reapportionment statute. The Drennan bill embodied substantially the features of previous enumeration laws by empowering the Governor to appoint enumerators in each county who were to certify their findings to the County Court Clerks who, in turn, reported to the Secretary of State. Next, the Secretary of State submitted the

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[53] *Ibid.*, 49.

[54] House Journal (Extra Session), 1891, 73.

[55] *Ibid.*, 111.

[56] *Senate Journal* (Extra Session), 1891, 85-88.

[57] *House Journal* (Extra Session), 1891, 109.

[58] *Acts of Tennessee*, 1891, Chapter 131.

[59] *Acts of Tennessee*, 1901, Chapter 122.

[60] *Senate Journal*, 1901, 33.

[61] Original manuscript bill in State Archives.

census report to the Legislature. The Drennan bill, including an amendment, was passed in the Senate[62] by a vote of 21 to 4. On January 31, the Redistricting Committee recommended the tabling of the Drennan measure[63] which was done by the House on the same day.[64]

A week later, February 7, Democratic Senator John M. Davis of Morgan County introduced Senate Joint Resolution No. 35 "to provide for enumeration of the voters of the State."[65] The Resolution[66] which was adopted by both houses was as follows:

> "WHEREAS, Under the provisions of the Constitution of the State of Tennessee an enumeration of the qualified voters of the State of Tennessee shall be made once in every ten years; and
>
> WHEREAS, The Constitution is silent upon the manner in which said enumeration shall be made; and,
>
> WHEREAS, It would incur an expense of about $20,000 on the taxpayers of Tennessee to make said enumeration by an actual canvass by enumerators in the various counties of the State; and
>
> [fol. 184] WHEREAS, The Federal census of 1900 has been very recently taken and by reference to said Federal census an accurate enumeration of the qualified voters of the respective counties of the State of Tennessee can be ascertained and thereby save the expense of an actual enumeration; therefor,
>
> *Be It Resolved*, That the Redistricting Committee authorized to sit during the recess for the purpose of preparing and reporting to this General Assembly a redistricting bill, be, and is hereby authorized and directed to make an enumeration of the qualified voters

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[62] *Senate Journal*, 1901, 85.

[63] *House Journal*, 1901, 193.

[64] *Ibid.*, 1901, 200.

[65] *Senate Journal*, 1901, 213.

[66] *Acts of Tennessee*, 1901, pp. 1260-1261.

of the State. And in making said enumeration said committee are authorized and directed to confer with the proper authorities at Washington for the purpose of procuring such information as will enable them to ascertain the number of qualified voters in each of the various counties of the State of Tennessee. *And said enumeration, when prepared by the said Redistricting Committee, shall be turned over to the Secretary of State and be filed by him in his office.*

Adopted February 7, 1901.

NEWTON H. WHITE,
Speaker of the Senate.

E. B. WILSON,
Speaker of the House of Representatives.

Approved February 8, 1901. BENTON MCMILLIN,
Governor."

It will be noted that the Resolution purported to be an "economy measure" in that census enumerators were eliminated at an estimated saving of $20,000.00 and a resort to and reliance upon the recent Federal Census was to be the source of ascertaining the number of qualified voters in the State. A further provision of the Resolution was that the Redistricting Committee was to sit during the legislative recess, that lasted from February 8 to March 11, and "prepare and report to the General Assembly a redistricting bill."[67]

The Redistricting Committee[68] on the part of the Senate was as follows:

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[67] Note. The above Resolution provided that the Redistricting Committee was to turn over the enumeration of voters to the Secretary of State to be filed in his office. An exhaustive search of the records in the office of Secretary of State and of the State Archives was unproductive, in that no such report was located.

[68] *Senate Journal*, 1901, 42.

[fol. 185] *Redistricting Committee*:

John M. Davis, Chairman, Morgan County
H. B. Tharp, Haywood County
F. J. Caldwell, Lake County
R. H. Fryer, Carroll County
E. E. Erwin, Maury County
C. P. Warfield, Montgomery County
J. J. Bean, Moore County
Ed. T. Seay, Sumner County
R. B. Williams, Franklin County
J. I. Cox, Sullivan County
C. C. Howell, Knox County.

According to the Senate roster, Senator Howell was the only Republican named on the Redistricting Committee, and the roll call shows that he was frequently absent on account of illness.

The House[69] members of the Redistricting Committee were:

Joseph E. Foust, Chairman, Trousdale County
Austin Peay, Montgomery County
Milton C. Sidwell, Clay County
William Pillow McClure, Marshall County
Harvey Alexander, Obion County
Robert Lee Peck, Robertson County
W. B. Romine, Giles County
John Paul Murphy, Knox County
John T. Peeler, Carroll County
Gilmer P. Smith, Shelby County
John Wesley Chumley, Claiborne County
David Carter Waters, Cocke County

The *House Journal* does not disclose the political affiliation of the above Representatives.

[fol. 186] The official legislative *Journals* shed no light upon the procedures invoked by the redistricting Committee during the legislative recess of one month. Newspaper articles appear to be the main sources of information in

[69] *House Journal*, 1901, 90 and 97.

this matter. According to a local (Nashville) newspaper,[70] the Committee was scheduled to meet on February 18 to "begin their work of redistricting the State." Toward the end of the article, it was asserted that:

> "The committee held it to be their duty under the law to redistrict the State according to its present population. They will adhere to getting the voting population from the figures of the Federal Census just completed, instead of retaking this census which it is figured will cost the State $20,000 if done."

Two days later, the same newspaper[71] reported that a map of the Congressional Districts had been prepared showing the counties and the population of each under the 1900 Federal Census. Furthermore, notice was given that:

> "the committee asks that all interested in any way in the redistricting of the congressional districts communicate their desires to the Committee either in person or by letter not later than Friday night" (February 22).

It was further stated that the Committee would meet every morning at the Tulane Hotel by 9 o'clock.

If newspaper assertions may be relied upon, the Redistricting Committee held "open house" to receive suggestions, but the disposition of such suggestions was disposed of in Star Chamber deliberations. For instance, it was alleged that a member of the Committee:

> "before he was sworn to secrecy, disclosed that at a secret session last week it was decided to take Morgan (County) from the Second and place it in the Fourth, to take out Sevier and place it in the First, and change Hamblen from the First to the Second. This has positively been decided upon by the Committee as its recommendation . . . "[72]

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[70] Nashville American, Feb. 17, 1901.

[71] *Ibid.*, February 19, 1901.

[72] Knoxville Journal and Tribune, February 25, 1901.

[fol. 187] On March 11, the day on which the Legislature reconvened after the recess, a contemporary newspaper[73] asserted that

> "The Redistricting Committee of the General Assembly has been busily engaged during the recess in arranging for reshaping the districts of the State. . . . The work has been decided upon by the Committee, and the representation has been based on the Federal Census of 1900. . . . "

The above newspaper in the same issue printed a list, by counties, of the proposed Congressional Districts, and also the apportionment for legislative seats, quoting the exact language of the caption of the bill that was enacted later into a law, namely,

> "An act to apportion the several counties of this State into senatorial and representative districts under the enumeration made under Senate Joint Resolution No. 35, and approved February 8, 1901, in pursuance of Article 2, Section 4, of the Constitution."

Now that the contents of the Redistricting Bill had been disclosed, a violent objection was voiced by a strong Republican Journal[74] which denounced the bill as "An Iniquitous Redistricting Bill," affording evidence that "the State is still dominated by a despotic oligarchy which calls itself the Democratic Party." Notwithstanding severe criticism, the Redistricting Committee introduced its apportionment bill three days after the reconvening of the Legislature.[75]

[fol. 188] After considerable seesawing back and forth, plus various and sundry proposed amendments, the Redistricting Bill as substantially drafted by the Redistricting Committee was passed in the Senate[76] on March 29 by a vote of 29 to 3. On April 2, Representative Austin Peay called for the previous question which was sustained by a vote of 61 to

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[73] *Nashville American*, March 11, 1901.

[74] *Knoxville Journal and Tribune*, March 12, 1901.

[75] House Journal, 1901, 358.

[76] *Senate Journal*, 1901, 422.

29. Thereupon, the bill was placed on third and final reading and was passed in the House[77] by a vote of 66 to 23. The enactment of this reapportionment measure marked the last law thus far passed by a Tennessee Legislature insofar as *legislative apportionment* is concerned. In marked contrast, *Congressional* reapportionment laws have been enacted at each decennial period up to and including 1951, with the exception of 1911.

Violent objections to the law were registered not only by newspapers but by various members of the Legislature itself. Representative John T. Raulston of Marion County, Chairman of the Republican House Caucus, filed a lengthy protest against the passage of the Redistricting Bill, said protest covering fifteen printed pages in the official *House Journal.*[78] Some six or eight additional Representatives went "on record" regarding their votes on said bill. If these protests be true, there can be no doubt but that the Redistricting Bill was discussed and considered by a caucus of the Democratic members of the Legislature prior to the final vote on its passage. For example, Representative John P. Murphy stated in his protest that

> "I vote aye only because the bill has received the endorsement of the Democratic caucus."

Representative Gilmer P. Smith of Shelby County declared that he supported the Bill solely upon the ground that he had participated in "two Democratic causes and thereby bound myself to abide the decision of a majority in those two caucases."[79]

[fol. 189] Two Senators, H. M. Gamble of Blount County and L. H. Lasater of McMinn County, filed also a fifteen page protest which was recorded in the official *Senate Journal.*[81] This protest is practically a *verbatim* copy of the pro-

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[77] *House Journal*, 1901, 581.

[78] *Ibid.*, 583-597.

[79] *Ibid.*, 582.

[80] *Ibid.*, 583.

[81] *Senate Journal*, 1901, 423-437.

test filed in the *House Journal*, with a preamble however alleging that:

1. No Republican member of either the House or the Senate was appointed on the Redistricting Committee.
2. The Republican minority was kept in ignorance of the action of the Redistricting Committee.
3. Newspaper reports constituted the only source of their information as to the probable action and recommendations of the Redistricting Committee.
4. "It is a fact that said committee had no figures showing the qualified voters of the State on which to base their said apportionment. Nor has said committee made any report to either House of the General Assembly showing any enumeration of voters, or in fact any basis whatever for their said apportionment bill. . . . "
5. "We charge that the Reapportionment Bill agreed upon and reported by the committee is based upon the census bulletins of the population of the State as announced by the Census Bureau at Washington." [82]

[fol. 190] Since 1901, there has been no reapportionment of legislative seats in the General Assembly. On the other hand, *Congressional* reapportionment has been made every decennial year since 1871, with the exception of 1911, and 1921. Inasmuch as the Federal Census of 1910 indicated that Tennessee would experience no change in the number of her Congressmen, perhaps that accounted for the fact that no Congressional reapportionment law was enacted by the Tennessee Legislature in 1911. It is true, however, that a special session of the Legislature had to be called in 1882 to enact a law governing Congressional reapportionment, inasmuch as the General Assembly had failed to enact such law in 1881. All along, the legislative *Journals* disclose that *legislative* reapportionment has generally presented more difficulty than *Congressional* reapportionment, although the

[82] *Ibid.*, 423-424.

latter issue has, at times, provoked spirited discussion and considerable "fireworks."

According to the calendar and the Tennessee Constitutional mandate, 1911 was "reapportionment year." On January 18, 1911, out-going Governor Malcolm R. Patterson in his parting Message to the Legislature made a brief reference to reapportionment, to-wit:

> "I favor and recommend a just and fair redistricting bill which will represent the will of the people and equally protect the rights of both political parties."[83]

The in-coming Governor, Ben W. Hooper, transmitted his main Message[84] to the Legislature on February 1, 1911, consisting of twenty-three pages in the legislative *Journals*. Neither in this nor in any other Message did Governor Hooper make any mention of reapportionment to the fifty-seventh General Assembly. This General Assembly, however, did not ignore altogether its responsibility in regard to reapportionment as being on its agenda.

[fol. 191] Five reapportionment bills, dealing with both legislative and congressional reapportionment, were introduced in the House, their respective numbers being House Bills No. 153, 967, 968, 1033, and 1034.[85] Two reapportionment bills, No. 800 and 801, were introduced in the Senate.[86] Each of the above bills, on second reading, was referred to the Redistricting Committee which, in turn, reported each bill "without recommendation." This action by the Redistricting Committee served "to chloroform" all the redistricting bills into oblivion, as no further action was taken by either branch of the Legislature. Result: no reapportionment law affecting either legislative or congressional reapportionment was passed by the 1911 General

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[83] *Senate Journal*, 1911, 100.
House Journal, 1911, 74.

[84] *Senate Journal*, 1911, 149-171.
House Journal, 1911, 199-221.

[85] *House Journal*, 1911, 1295, 1333, and 1334.

[86] *Senate Journal*, 1911, 1081.

Assembly. The adoption of Senate Joint Resolution[87] No. 60, calling upon the Redistricting Committee to utilize the Federal Census of 1910 as a basis for taking an enumeration of the qualified voters, proved to be only a species of "window dressing," inasmuch as nothing appears to have been done in the premises regarding their assigned directive. [fol. 192] In his major Message[88] to the Fifty-Eighth General Assembly, Governor Ben W. Hooper made no reference to reapportionment. In a special Message,[89] on February 10, 1913, Governor Hooper devoted twenty-seven pages to the question of *legislative* apportionment. At the time of the transmission of this special Message there was a legislative apportionment bill pending before the General Assembly. Governor Hooper incorporated in his Message twenty-three pages of figures showing the population of Tennessee, by counties, according to the Federal Census of 1910. Next, he took up the existing Senatorial Districts and gave the populations of each. A similar classification of counties comprising the Floterial Districts was also presented. From these figures Governor Hooper maintained that there was "gross injustice and inequality of the present apportionment." Such inequality, he declared, is inherent in the arrangement of the counties in the Act of 1901, and part of it is due to the changes in population in the last decade."

Out of a total of 2,395 bills introduced in the 1913 General Assembly, only one bill related to legislative reapportionment. That one bill[90] was House Bill No. 227, introduced by Representative Anderson D. Albright of Knox County, and was the "pending bill" referred to by Governor Hooper. The bill passed second reading in the House on January 30,

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[87] *Acts of Tennessee*, 1911, 315.

[88] *Senate Journal*, 1913, 51-78.
House Journal, 1913, 56-83.

[89] *Senate Journal*, 1913, 245-271.
House Journal, 1913, 265-291.

[90] The original bill is missing in the State Archives; consequently its provisions are unknown.

1913, and was referred to the Committee on Redistricting.[91] The Senate Redistricting Committee was composed of Senators John C. Crawford, Lewis Pope, Dorsey B. Thomas, Baty Cecil, Ernest C. Smith, Eugene Blakemore, Norman B. Morrell, S. H. Williams, Hoyt T. Stewart, and James Brett, Jr.[92]

[fol. 193] The legislative Journals indicate that the reapportionment bill never received any further consideration by the General Assembly.[93]

The 1913 Legislature was called into two extra sessions by Governor Hooper, but no legislative action was taken in regard to reapportionment.

Insofar as reapportionment was concerned, the year 1915 was an "off" year. Nevertheless, Governor Hooper in his basic Message to the 1915 General Assembly referred to the failure of the Legislature to pass any apportionment law[94] in either 1911 or 1913. His recommendation was that

> "The present General Assembly ought to enact a new legislative apportionment, based alone upon geography and population, and ignoring considerations of partisan politics." [95]

Two weeks before *sine die* adjournment, Senator T. J. Hoskins, a locomotive engineer and a Republican of Knoxville, introduced Senate Bill No. 1106, "to apportion counties into representative and senatorial districts." [96] The only

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[91] *House Journal*, 1913, 189.

[92] *Senate Journal*, 1913, 164.

[93] *Note:* In a telephone conversation, on October 27, 1959, with the sole surviving member of the 1913 Senate Redistricting Committee, that member was asked what action was taken by the Redistricting Committee on the Redistricting Bill. His recollection seemed to be crystal clear. His reply to the query was: "We chloroformed it and put it to sleep."

R. H. W.

[94] *Senate Journal*, 1915, 43.

[95] *Ibid.*, 44.

[96] *Ibid.*, 781.

other action indicated in the *Senate Journal* is as follows: "Held on the Clerk's desk."

[fol. 194] In the 1917 Session of the Legislature, without any recommendation from the incumbent Governor, Tom C. Rye, a legislative reapportionment bill No. 278 was introduced in the Senate.[97] The bill was referred to the Judiciary Committee and failed to be recommended for passage. This seems to have ended the matter, for nothing further is found in the legislative *Journals* concerning its fate.

In the 1919 legislative session, neither the Governor nor the General Assembly gave any attention to reapportionment.

In the 1921 session, which normally was "reapportionment year", three reapportionment bills, No. 12, 942, and 943, were introduced in the House. All three bills were passed on second reading and then referred to the Redistricting Committee.[98] So far as the official record discloses, this was the last ever heard of these bills. No Congressional reapportionment law was enacted, even though it was a decennial year. The Legislature followed a precedent established in 1911 when Congressional Apportionment was by-passed. In each instance, in 1911 and 1921, the Federal Census indicated that there would be no change in the number of Congressmen alloted to Tennessee. Upon that basis, the Legislature apparently decided "to let sleeping dogs lie."

[fol. 195] Legislative Session, 1923

Neither the out-going nor in-coming Governor mentioned reapportionment in any of their respective Messages. No reapportionment bill was introduced in either branch of the General Assembly, nor was any Resolution introduced on the subject.

Legislative Session, 1925

Ditto.

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[97] *Senate Journal*, 1917, 409.

[98] *House Journal*, 1921, 32, 637.

LEGISLATIVE SESSION, 1927.

Governor Austin Peay made no reference to reapportionment in any of his Messages. However, on March 31, 1927, Representative A. R. Brown, of Unicoi County, introduced House Bill[99] No. 887 "To redistrict Tennessee." The bill passed second reading and was then referred to the Redistricting Committee.[100] Said Committee recommended the above bill "for rejection." [101] On April 11, 1927, the bill was re-referred to the Redistricting Committee[102] and no further action is indicated in the official *Journals*.

LEGISLATIVE SESSION, 1929.

On February 11, 1929, Representatives Louis Ferguson of Coffee County and J. S. Riley of Lake County introduced a bill[103] "to apportion the several counties of Tennessee into Senatorial and Representative Districts." Five hundred copies of the bill were ordered printed.[104] Next, the bill was sent to the Redistricting Committee.[105] On March 19, Representative Walter Haynes of Franklin County moved that the bill be recalled from the Redistricting Committee.
[fol. 196] An effort to table his motion failed by one vote.[106] A few days later, Mr. Haynes moved the previous question to postpone action on the bill indefinitely, his motion being carried by an unrecorded vote. Thereupon, Mr. Haynes moved a reconsideration of the action just taken, whereupon Representative McReynolds of Montgomery County moved successfully that the Haynes motion go to the table.[107] This ended the matter for that session.

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[99] *House Journal*, 1927, 667.

[100] *Ibid.*, 733.

[101] *Ibid.*, 922.

[102] *Ibid.*, 1005.

[103] *House Journal*, 421.

[104] *Ibid.*, 436.

[105] *Ibid.*, 443.

[106] *Ibid.*, 719.

[107] *Ibid.*, 739-740.

LEGISLATIVE SESSION, 1931

No mention of reapportionment was made by the Governor in any of his Messages to the Legislature, even though it was a decennial or "reapportionment year." Two bills *re* Congressional reapportionment were introduced, Senate Bill No. 429 by Senators W. W. Craig and Leighton Ewell,[108] and House Bill No. 634 by representative James Cummings.[109] After several unsuccessful attempts to amend the Cummings bill, the original bill was passed[110] by a vote of 78 to 8. The above House Bill No. 634 was substituted for Senate Bill No. 482 on same subject, and passed[111] by a vote of 30 to 0. Thus, a Congressional reapportionment law[112] had been enacted.

On May 28, five Republican Senators introduced a bill[113] providing for legislative reapportionment. The bill was referred to the Judiciary Committee[114] and no further notice of the bill appears in the legislative *Journals*.

[fol. 197] LEGISLATIVE SESSION, 1933.

No mention of reapportionment by either the Governor or the General Assembly.

LEGISLATIVE SESSION, 1935.

There was no mention of reapportionment in any of the Governor's Messages.

On April 5, Senator J. T. Trotter of Blount County introduced House Bill No. 818 that dealt with *legislative* apportionment.[115] On second reading the bill was referred to the

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[108] *Senate Journal*, 1931, 350.

[109] *House Journal*, 1931, 499.

[110] *Ibid.*, 549.

[111] *Senate Journal*, 1931, 435.

[112] *Acts of Tennessee*, 1931, Ch. 20.

[113] *Senate Journal*, 1931, 708.

[114] *Ibid.*, 727.

[115] *Senate Journal*, 1935, 731.

Steering Committee.[116] Nothing further was heard of said bill, insofar as the official *Journals* disclose. Like countless other bills, this bill never got placed on the calendar.

At an extra session, July 15, 1935-August 3, 1935, no action was taken *re* reapportionment. Three hundred and thirteen items were specified in the Governor's Proclamation,[117] but no mention of reapportionment.

For the first time since the adoption of the 1870 Constitution, the Seventieth General Assembly was called into extra session *prior to the convening of the regular session.* An act was enacted, that of complying with the provisions of a Federal Act relating to Old Age Benefits,[118] and one other act providing for the expenses of said session. Nothing concerning reapportionment was done, by either the Governor or the General Assembly.

[fol. 198] Legislative Session (Regular Session) 1937

No attention was paid to reapportionment by either the Governor or the General Assembly.

Second Extra Session, 1937.
Nothing *re* reapportionment.

Third Extra Session, 1937.
Nothing *re* reapportionment.

Legislative Session, 1939.

Ditto.

Legislative Session, 1941.

In his Message of January 7, 1941, Governor Prentice Cooper had this to say:[119]

> "I earnestly hope that the Congressman taken away from Tennessee two years ago will be restored. If Tennessee is given the new Congressman, I would favor

[116] *Ibid.*, 780.

[117] *Senate Journal* (1st Extra Session)—1935, 4-39.

[118] *Senate Journal* (1st Extra Session)—1936, 1-6.

[119] *Senate Journal*, 1941, 49.

the restoration of the districts as they existed when Tennessee had its ten Congressmen rather than have a Congressman-at-large."

On February 5, 1941, Mr. Speaker O'Dell and Representative J. B. Ragon, Jr., of Chattanooga, introduced House Bill No. 700

"To redistrict the State, as to Congressional Districts."[120]

When the bill came up on third reading, three proposed amendments were tabled, whereupon the bill was passed[121] in the House by a vote of 75 to 10. The bill was then passed[122] in the Senate by a vote of 28 to 2. A Congressional Reapportionment Law[123] had been enacted.

No bill to provide for *legislative* reapportionment was introduced in either branch of the General Assembly during this session.

Legislative Session, 1943 Nothing whatsover *re* Reapportionment.

[fol. 199] Legislative Session (Extra Session) 1944

Nothing—*Re* Reapportionment

Legislative Session, 1945

Governor Cooper made no reference to reapportionment in his Message to the Generay Assembly, and no bill providing for Statewide reapportionment was introduced in either branch of the Legislature. There were, however, two bills introduced in the Senate providing for a partial reapportionment of certain Congressional Districts. Each bill[124] sought to amend the State wide Congressional Reappor-

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[120] *House Journal*, 1941, 562.

[121] *Ibid.*, 774.

[122] *Senate Journal*, 1941, 619.

[123] *Acts of Tennessee*, 1941, Chapter 95.

[124] *Senate Journal*, 1945, 255 and 498.

tionment law of 1941. Senator Arnold's bill added the counties of Scott and Morgan to the Second Congressional District and eliminated them from the Fourth Congressional District.[125] Senator Cantrell's bill moved the counties of McMinn and Monroe from the Second to the Third Congressional District.[126] This unusual shift of four counties from one Congressional District to another constituted the only reapportionment legislation on the Seventy Fourth Session of the General Assembly.

[fol. 200]

LEGISLATIVE SESSION, 1947

Nothing *re* Reapportionment

LEGISLATIVE SESSION, 1949

Ditto.

LEGISLATIVE SESSION, 1951

On January 22, 1951, Governor Gordon Browning transmitted the following Message[127] to the Legislature:

"TO THE SPEAKERS OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE GENERAL ASSEMBLY OF TENNESSEE

I have the honor to submit herewith Certificate from Honorable Ralph R. Roberts, Clerk of the House of Representatives of the United States Congress. This Certificate showing that from and after the present term of Congress Tennessee will be entitled to Nine Representatives in the House there instead of the Ten now serving. I recommend that the Legislature take proper steps to conform to this condition by arranging Nine Congressional Districts in Tennessee instead of the Ten now existing.

Respectfully submitted,

GORDON BROWNING
Governor.

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[125] *Acts of Tennessee*, 1945, Chapter 51.

[126] *Ibid.*, Chapter 59.

[127] *Senate Journal*, 1951, 182-3.

Altogether, five reapportionment bills were introduced, two in the House and three in the Senate. Senate Bills Nos. 690 and 922 dealt with legislative reapportionment.[128] The other Senate Bill No. 988 dealt with Congressional reapportionment. Senate Bill No. 690 was referred to the committee on Judiciary,[129] and Senate Bill No. 922 was referred to the Steering Committee.[130] The Senate Journal discloses no [fol. 201] further action on either bill. Senate Bill No. 988, dealing with Congressional reapportionment, was likewise sent to the Steering Committee from which it never emerged.[131]

House Bill No. 987, dealing with Congressional reapportionment only, was referred to the Committee on Redistricting.[132] No further action on this bill is indicated in the legislative *Journals*. House Bill No. 1144, also dealing with Congressional reapportionment, seems to have the "green light", but the bill encountered various amendments, delaying tactics, *et cetera*. Eventually, the amended bill was passed[133] in the House by a vote of 81 to 9., and in the Senate[134] by a vote of 27 to 4. A congressional reapportionment law had been enacted,[135] but no legislative apportionment law was passed.

[fol. 202] LEGISLATIVE SESSION, 1953

The Governor made no reference to reapportionment in any Message to the General Assembly. Six Bills, three in the Senate and three in the House, were introduced. Each bill dealt with redistricting the State as regards legislative seats in the General Assembly. The Senate Bills were Nos. 69, 70 and 71. The House Bills were Nos. 120, 123, and 125.

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[128] *Senate Journal*, 1951, 575 and 812.

[129] *Ibid.*, 621.

[130] *Ibid.*, 867.

[131] *Ibid.*, 990.

[132] *House Journal*, 1951, 1033.

[133] *Ibid.*, 1490.

[134] *Senate Journal*, 1951, 1267.

[135] *Acts of Tennessee*, 1951, Chapter 251.

The Three Senate bills passed second reading and were ordered "held on the desk".[136] A few days later, said bills were, after considerable delay, reported[137] out of the Committee "without recommendation." This marked the demise of all Senate Bills *re* reapportionment.

All three House Bills were routinely assigned to the Redistricting Committee.[138] For some undisclosed reason, House Bill No. 120 was recalled from above Committee and referred to the Elections Committee,[139] which a bit later reported bill "without recommendation." The Redistricting Committee disposed of the other two bills by same procedure, "without recommendation." And so, all six reapportionment bills went down the drain.

[fol. 203] LEGISLATIVE SESSION, 1955

In a Message embracing seventy-four printed pages in the official legislative Journals, Governor Frank G. Clement made this comment on Reapportionment:[141]

> "Every elected representative of the people of the State of Tennessee recognizes the acute problem of reapportionment of representation. Our Constitution provides that the State shall be redistricted for the purpose of determining proper representation every ten years.
>
> This provision of our basic law has not been obeyed for nearly 50 years—since, in fact, the year 1907, when the last reapportionment was accomplished. The districts set up at that time are still in effect, except for minor changes not following any logical pattern, and, in

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[136] *Senate Journal*, 153, 195.

[137] *Ibid.*, 205.

[138] *Ibid.*, 768 and 1213.

[139] *House Journal*, 1953, 220-221.

[140] *Ibid.*, 262.
Senate Journal, 1955, 149.

[141] *House Journal*, 1955, 135.
Note: The year 1907 is a typographical error. The year is 1901.

> some cases, there are glaring inequalities . . . It is my recommendation that there be appointed a special joint committee to study the problem of reapportionment, its inequalities and its ramifications, this special committee to be instructed to report back to the next Assembly its findings and recommended course of action. I urge that you give this matter your serious consideration."

Two House Bills pertaining to legislative apportionment, No. 9 and No. 46, were introduced early in the session. Bill No. 9 did not make much progress, being withdrawn early from the House.[142] Upon second reading House Bill No. 46 was rejected[143] by a vote of 62 to 33. A motion to reconsider was sent to the table, and this ended the matter.

[fol. 204] House Resolution No. 62, relative to having the Legislative Council make a study of reapportionment, failed to obtain a favorable vote for a suspension of the rules for immediate consideration of the Resolution.[144] This being the final day of the session, the foregoing action of the House ended the matter.

Senate Joint Resolution No. 17 relative to the appointment of a Committee to investigate Reapportionment was adopted[145] by the Senate on January 25, 1955. According to the Senate Journal, the above Resolution was tabled by the House.[146]

Legislative Session, 1957

In his Message to the General Assembly on January 16, Governor Clement renewed his recommendation of two years ago that

> "You either reapportion on a fair basis or at least that you authorize a study of the problem by the Legislative

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[142] *House Journal*, 1955, 68.

[143] *Ibid.*, 181-183.

[144] *Ibid.*, 1868-9.

[145] *Senate Journal*, 1955, 224.

[146] *Ibid.*

Council, the results of this study to be made available to your successors in the Eighty-First General Assembly" [147]

On the second day of the session, Representative Paul Graham of Marion County introduced House Bill No. 6 "to provide Reapportionment of Representatives." [148] The bill was finally placed on the calendar by the Steering Committee and, on March 13, action on the bill was postponed indefinitely by a vote of 54 to 41.[149]

[fol. 205] Senate Joint Resolution No. 56 relative "to study reapportionment" was referred to the "Steering Committee" on March 17, and nothing more was heard of it.[150]

House Joint Resolution No. 26 "relative to a study of reapportionment by the Legislative Council" was placed on the calendar by the Steering Committee, but "further action be postponed indefinitely" was the verdict in the House by a vote of 48 to 44.[151] No sort of reapportionment legislation was enacted by the 1957 general assembly.

TENNESSEE LEGISLATIVE BILLS, 1871-1957

Year	*Number of bills Introduced*	
	Senate	*House*
1871	283	681
1872 (Extra)	32	53
1873	311	510
1875	289	571
1877	327	723
1879	746	745
1879 (Extra)	12	8

[147] *Senate Journal*, 1957, 95.

[148] *House Journal*, 1957, 32.

[149] *Ibid.*, 1202.

[150] *Ibid.*, 1325.

[151] *Ibid.*, 1252.

TENNESSEE LEGISLATIVE BILLS, 1871-1957 (Continued)

Year	Number of bills Introduced	
	Senate	House
1881	363	691
1881 (Extra)	15	14
1882 (Extra)	11	90
[fol. 206]		
1882 (2nd Extra)	17	21
1882 (3rd Extra)	9	13
1883	441	824
1885	729	457
1885 (Extra)	60	71
1887	497	829
1889	518	826
1890 (1st Extra)	61	75
1890 (2nd Extra)	2	3
1891	488	725
1891 (Extra)	68	82
1893	528	695
1895	502	707
1895 (1st Extra)	8	4
1896 (2nd Extra)	6	14
1897	601	808
1898 (Extra)	27	35
1899	698	1023
1901	662	1120
1903	757	1089
1905	713	1028
1907	898	1096
1909	873	1087
1911	1066	1216

[fol. 207]

TENNESSEE LEGISLATIVE BILLS, 1871-1957 (Continued)

Year	Number of bills Introduced	
	Senate	House
1913	1090	1305
1913 (1st Extra)	249	277
1913 (2nd Extra)	8	8
1915	1422	1632
1916 (Extra)	1	1
1917	1336	1622
1919	1237	1335
1920 (Extra)	156	135
1921	1471	1779
1923	985	1255
1925	1097	1365
1927	992	1401
1929	1482	1494
1929 (Extra)	112	125
1931	1396	1565
1931 (1st Extra)	5	6
1931 (2nd Extra)	222	251
1933	1173	1727
1935	1299	1660
1935 (Extra)	250	303
1936 (Extra)	2	2
1937	1337	1731
1937 (2nd Extra)	69	87
1937 (3rd Extra)	70	85
[fol. 208]		
1939	1169	1544
1941	881	1151

TENNESSEE LEGISLATIVE BILLS, 1871-1957 (Continued)

Year	Number of bills Introduced Senate	House
1943	834	978
1944 (Extra)	5	5
1945	904	1141
1947	1302	1472
1949	1382	1768
1951	1243	1447
1953	1101	1351
1955	968	1123
1957	918	1144
1959*		
TOTAL	40,812	52,331

GRAND TOTAL: 93,143

This documented survey of Reapportionment in Tennessee, from 1870 to 1957 inclusive, is based almost entirely upon official sources, namely, the legislative Journals and the session Laws. In addition to the above sources, the Resolutions,—House, Senate, House Joint and Senate Joint Resolutions—were examined and all the Messages of the various Governors were scanned. It was absolutely necessary *to scan the titles of all the bills introduced!* You never knew when you would run across a reapportionment bill.

* Not yet off the press.

[fol. 210]

EXHIBIT 3 TO INTERVENING COMPLAINT

CHAPTER NO. 14

HOUSE BILL No. 123

(By James L. Bomar, James H. Cummings and W. L. Barry)

A BILL to be entitled: AN ACT to provide for the operation of the educational system of the State and its subdivisions, including, but not limited to, capital outlay, textbooks, Educational Grants-in-Aid, and Tennessee Teachers' Retirement System, the Tennessee State Library and Archives, the Tennessee Educational Television Commission scholarships for graduates of the Tennessee School for the Blind, the Tennessee School for the Deaf, and the Tennessee Preparatory School, pensions for aged teachers, and retirement systems of State schools; to provide for the training of exceptional children; to make appropriations for the purposes of this Act and to regulate the expenditure of such appropriations; to confer powers on the officers, boards, institutions and agencies of such school systems for the administration of this Act; and to repeal Chapter 53, Public Acts of 1957, the caption of which is as follows: "AN ACT to provide for the operation of the educational system of the State and its subdivisions, including, but not limited to, capital outlay, text-[fol. 211] books, the Tennessee Teachers' Retirement System, scholarships for graduates of the Tennessee School for the Blind and the Tennessee School for the Deaf, pensions for aged teachers, and retirement systems of State schools; to provide for the training of exceptional children; to make appropriations for the purposes of this Act and to regulate the expenditure of such appropriations; to confer powers on the officers, boards, institutions and agencies of such school systems for the administration of this Act; and to repeal Chapter 136, Public Acts of 1955, the caption of which is as follows: 'AN ACT to provide for the operation of the educational system of the State and its subdivi-

sions, including, but not limited to, capital outlay, textbooks, the Tennessee Teachers' Retirement System, scholarships for graduates of the Tennessee School for the Blind and the Tennessee School for the Deaf, pensions for aged teachers, and retirement systems of State schools; to provide for the training of exceptional children; to make appropriations for the purposes of this Act and to regulate the expenditure of such apropriations; to confer powers on the officers, boards, institutions and agencies of such school systems for the administration of this Act; to repeal Chapter 70, Public Acts of 1953, the caption of which is as follows: 'AN ACT to provide for the operation of the educational system of the State, including capital outlay, the Tennessee Teachers' Retirement System, scholarships for graduates of the Tennessee School for the Blind and the Tennessee School for the Deaf, pensions for aged teachers, and School for the Deaf retirement pensions, by making appropriations therefor, by regulating the expenditure of such appropriations and by providing for the powers of the institutions and agencies in such system; and for imposing certain duties upon the State Board of Education with reference to exceptional children; and to repeal Chapter 9, Public Acts of 1949, the caption of which is as follows: 'AN ACT to provide for the operation of the educational system of the State, including capital outlay, by making appropriations therefor by regulating the expenditure of such appropriations and by providing for the powers of the institutions and agencies in such system; and to repeal Chapter 179, Public Acts of 1951, the caption of which is as follows: 'AN ACT to provide for the education of exceptional children in counties, cities and special school districts; to define the exceptional child; to establish the age for which the State shall provide educational services; and for the promotion, operation and supervision of special courses of instruction for the exceptional child' and to repeal Chapter 35, Public Acts of 1953, the caption of which is as follows: 'AN ACT to appropriate funds to be distributed to counties, cities and special school districts both equalizing and non-

equalizing for the purchase of textbooks and the administration of the textbook program for grades one through twelve for the public schools, and to use any excess funds distributed for public school purposes; to provide for the issuance of bonds by the State of Tennessee acting by resolution of the State Funding Board [fol. 212] for said purpose; and to provide regulations governing the disbursement and the use of said funds.'"

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That there is hereby appropriated from the State Treasury for the fiscal year beginning July 1, 1959, and for the fiscal year beginning July 1, 1960, and annually thereafter, the amounts herein set forth for the various educational items and services as indicated and described herein.

The appropriations herein made are in lieu of all appropriations, continuing or contingent, made by statutes enacted prior to the effective date hereof, except that in all cases where the proceeds of certain tax levies, either ad valorem or privilege, have heretofore been allocated, or shall be allocated by statute to educational purposes, this Act shall not be construed as in any wise amending such allocations, but on the contrary such allocations shall continue in full force and effect as completely as though embraced herein; and the proceeds of such tax levies shall be applied, first, to the payment of the sums appropriated herein before any amount be withdrawn from the general fund of the State for these purposes.

SECTION 2. *Be it further enacted,* That for the purpose of the current operation and maintenance of the public schools of this State, grades one through twelve, there is hereby appropriated for the fiscal year beginning July 1, 1959, Eighty-four Million, Three Hundred Thousand ($84,300,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and for each fiscal year thereafter, there is hereby appropriated, subject to the provisions of Section 39 of this Act, Eighty-nine Million, Eight Hundred Thousand ($89,800,000.00) Dollars, out of the treasury of the State,

[fol. 213] which sums shall be distributed upon the conditions hereinafter prescribed.

SECTION 3. *Be it further enacted*, That for the purpose of distributing the funds appropriated under Section 2 of this Act, counties shall be divided into two classes: (1) equalizing counties, and (2) non-equalizing counties. Equalizing counties shall be construed to mean those counties that meet the requirements and conditions hereinafter prescribed in this Act for equalizing counties. Distribution of funds shall be made to equalizing counties as set forth in Sections 4 through 6 of this Act. Funds distributed to equalizing counties from the appropriations in Section 2 of this Act shall be known as equalizing funds. Non-equalizing counties shall be construed to mean those counties which elect not to become equalizing counties, or which fail to meet the requirements for equalizing counties. Distribution of funds shall be made to non-equalizing counties as set forth in Section 7 of this Act. Funds distributed to non-equalizing counties from the appropriations in Section 2 of this Act shall be known as non-equalizing funds. It shall be assumed that all counties shall remain in the same category in which they were the previous fiscal year unless they elect to change under the provisions of this Act, and so notify the State Commissioner of Education in writing on or before August 1 of the current school year. In order for a city or special district to qualify for equalizing funds, the county in which the city or special school district is located shall first qualify for and elect to participate in equalizing funds.

EQUALIZING SYSTEMS

SECTION 4. *Be it further enacted*, That there shall be a minimum foundation school program for current opera-
[fol. 214] tion and maintenance of the public schools of this State, grades one through twelve, and the elements and the determination of the cost of the services of the said minimum foundation program shall be as follows:

(1) *Salaries*

(a) The salary of a county superintendent shall be included in the minimum foundation school program of an

equalizing county and determined on the basis of a salary schedule prescribed by the State Board of Education and approved by the State Commissioner of Education. In prescribing the salary schedule, the State Board of Education shall take into consideration the training and experience of the superintendent and the average daily attendance of the system of which he is superintendent.

There shall be included in the minimum foundation school program of an equalizing city, or special school district the salary of the superintendent of schools of such city, or special school district, if not otherwise provided, for the school year 1959-60, an amount not to exceed Nineteen Hundred Thirty-five ($1935.00) Dollars, and for the school year 1960-61 an amount not to exceed Two Thousand Thirty-five ($2,035.00) Dollars, according to a schedule which shall be established by the State Board of Education and approved by the State Commissioner of Education.

(b) System-wide positions allowed and used, together with the cost of salaries thereof, other than the position and salary of the superintendent of schools for which provision is made in subsection (1) (a) of this section, shall be allowed in the minimum foundation school program of an [fol. 215] equalizing county, city, or special school district in accordance with employment standards, salary schedules, system-wide position teacher ratios and the maximum and minimum number per school system of such system-wide positions as shall be established by the State Board of Education and approved by the State Commissioner of Education. Any system-wide position, together with the salary thereof, which was in existence for the school year 1958-59 and for which provision is not otherwise made in accordance with the provisions of this subsection, may be continued at the discretion of the State Commissioner of Education for the biennium 1959-61. In order for any system-wide position, together with the salary therefor, as authorized hereinbefore in this paragraph, to be included in the maximum foundation school program of an equalizing county, city, or special school district, the person filling such system-wide position shall be recommended by the local superintendent of schools and elected by the local board of education.

(c) The salaries as determined under the State salary schedule, as provided for in Section 10 of this Act, of such teachers and principal-teachers as shall be allowed and used under teacher-pupil ratios established by the State Board of Education and approved by the State Commissioner of Education shall be included in the minimum foundation school program of an equalizing county, city, or special school district. The aggregate annual amount to be included for the salaries of teachers and principal-teachers in each equalizing county, city, or special school district, shall be calculated by multiplying the average annual salary of teachers and principal-teachers of each equalizing county, city, or special school district under the State salary schedule as provided for in Section 10 of this Act, by the [fol. 216] number of teacher and principal-teacher positions allowed and used in the minimum foundation school programs, in keeping with the teacher-pupil ratios fixed by the State Board of Education; provided that the average annual salary of teachers and principal-teachers of each school system shall be determined by dividing the aggregate annual salaries based on the State salary schedule as herein provided, of teachers and principal-teachers of a school system for the first day of the third month of the school term by the total number of teacher and principal-teacher positions of that school system for the first day of the third month of the school term; provided further that any county, city, or special school district board of education may designate the teacher and principal-teacher positions used in computing the average annual salary and shall certify to the State Commissioner of Education the persons filling such positions, on the first day of the third month of the school term; provided that if the number of teacher and principal-teacher positions thus designated is less than the number that would otherwise be allowed and used in the minimum foundation school program under the rules and regulations of the State Board of Education, only the number of positions so designated by a county, city, or special school district board of education shall be included in that system's minimum foundation program.

The information on which the average annual salary of teachers and principal-teachers is determined shall be re-

ported to the State Commissioner of Education on or before January 1 of the current school year, on forms prescribed by him.

(d) One clerical position and the salary therefor shall be allowed in the minimum foundation school program of an equalizing county for the office of the county superin- [fol. 217] tendent, provided that the person employed in such position shall be recommended by the local superintendent of schools and elected by the local board of education. The State Board of Education shall formulate rules and regulations, including employment standards and a salary schedule, for the clerical position authorized in this subsection. There is hereby allocated One Hundred Four Thousand ($104,000.00) Dollars, per annum, of the appropriation made in Section 2 of this Act for salary supplements of school clerical employees and/or per capita amounts for clerical services in both equalizing and non-equalizing school systems; provided that such supplements and/or per capita amounts shall be allowed in the minimum foundation school program of an equalizing county, city, or special school district under the rules and regulations of the State Board of Education and approved by the State Commissioner of Education.

(2) *Transportation*

Pupil transportation services shall be defined by the State Board of Education and approved by the State Commissioner of Education, and the cost thereof shall be allowed in the annual minimum foundation school program for current operation and maintenance purposes of equalizing counties and shall be determined in the following manner:

(a) For the fiscal year beginning July 1, 1959, there shall be made available, in the aggregate minimum foundation school programs of equalizing counties (including both State and local funds), for the aggregate state-wide cost of pupil transportation services in equalizing counties the sum of Eight Million, One Hundred Two Thousand ($8,102,000.00) Dollars, and for each fiscal year thereafter [fol. 218] there shall be made available in the aggregate

minimum foundation school program of equalizing counties (including both State and local funds), for the aggregate state-wide cost of pupil transportation services in equalizing counties the sum of Eight Million, Two Hundred Thirty-four Thousand ($8,234,000.00) Dollars; provided that the State Commissioner of Education shall have the authority to increase or decrease the aggregate state-wide amount for pupil transportation services in equalizing counties and the aggregate annual amount allocated for the cost of pupil transportation services in Section 7 of this Act to non-equalizing counties, to the end that a unified transportation program may be effectuated.

(b) There shall be allowed in the minimum foundation school program for each equalizing county for the cost of pupil transportation purposes the following:

((1)) Ten ($10.00) Dollars shall be allowed for each pupil transported during the preceding school year, according to the rules and regulations of the State Board of Education and approved by the State Commissioner of Education.

((2)) The amount remaining out of the total allocated for pupil transportation services in equalizing counties, after the allowance in ((1)) above has been deducted, shall be allowed to the various equalizing counties, according to the ratio of the average rural population per square mile in the State to the average rural population per square mile in the county.

The cost of pupil transportation services in a county shall be determined by adding together the allowances made in such county under ((1)) and ((2)) above. In [fol. 219] making the allowance herein provided for pupil transportation, only the average daily attendance of pupils transported at public expense who live one and one-half ($1\frac{1}{2}$) miles or more from the school to which they are assigned by the respective board of education and in which they are enrolled shall be taken into account; provided, however, that the county board of education may in its discretion provide, at local expense, pupil transportation facilities for children who live less than one and one-half ($1\frac{1}{2}$) miles from the school to which they are assigned by

the respective board of education and in which they are enrolled; provided further that State transportation funds may be distributed to counties under the rules and regulations of the State Board of Education and approved by the State Commissioner of Education for the transportation of physically handicapped pupils who are transported less than one and one-half ($1\frac{1}{2}$) miles.

It is further provided that the amount of any funds allowed in the minimum foundation school program of an equalizing county for transportation services which are unused and unobligated for pupil transportation services at the end of the fiscal school year shall be certified by the county superintendent of schools to the county trustee, who shall transfer such unused and unobligated funds to the "State Capital Outlay School Fund" of that county school system as provided in Section 15 of this Act.

(3) *Other Current Operating Expenses*

(a) Travel

The travel expenses of the county superintendent and members of the county board of education shall be allowed in the minimum foundation school program of an equal-[fol. 220] izing county in the amount of Five Hundred ($500.00) Dollars, per annum. Travel expenses for personnel rendering services on a county-wide basis in system-wide positions as provided in subsection (1) (b) of this section, who in the discharge of official duties are required to travel, shall be included in the minimum foundation school program of an equalizing county for each such county-wide position on the basis of an amount of Four Hundred Fifty ($450.00) Dollars, per annum, for each such county-wide full-time position. Travel expenses for each teacher of special education who in the discharge of his official duties is required to travel, shall be allowed in the minimum foundation school program of an equalizing county on the basis of Four Hundred Fifty ($450.00) Dollars, per annum, for each full-time teaching position. Travel expenses for teachers of home-bound children shall be allowed in the minimum foundation school program of an equalizing city or special school district on the basis of an amount of Four

Hundred Fifty ($450.00) Dollars, per annum, for each full-time teaching position.

The travel allotments herein provided in this subsection, other than that of the county superintendent and members of the county board of education, shall be included only for those positions allowed and used in the minimum foundation school program, and then only in the event that the person employed in each such position shall meet the employment standards for such positions as shall be adopted by the State Board of Education and approved by the State Commissioner of Education.

Each official, including the county superintendent of schools, and employee of a board of education, who is authorized to incur travel expenses which are to be paid from [fol. 221] any public school funds, is directed and required to make out an accurate itemized statement of said expenses, showing the date and amount of each separate item and the purpose for which it was expended. The correctness of each expense account and the fact that it was actually incurred in the performance of official duties shall be certified by such official or employee. The travel expenses included in the minimum foundation school program, as authorized hereinbefore in this subsection, shall be paid by the local superintendent of schools, upon order of the local board of education, on a reimbursable basis only.

(b) *Learning and Instructional Materials and School Health Services*

A per capita amount of One and 25/100 ($1.25) Dollars based on the average daily attendance of the preceding school year of an equalizing county, city, or special school district shall be included each school year in the minimum foundation school program of such equalizing county, city, or special school district, for the purchase of learning and instructional materials and school health services, according to a plan recommended by the local superintendent of schools and approved by the local board of education of said equalizing county, city, or special school district; provided that a copy of such plan shall be filed with the State Commissioner of Education on or before September 1 of the current school year. The term "school health services"

shall be defined by the State Board of Education and approved by the State Commissioner of Education.

(c) *School Plant Operation, Maintenance Services, Fixed Charges, and Other Expenses of General Control*

[fol. 222] A per capita amount of Nine and 70/100 ($9.70) Dollars based on the average daily attendance of the preceding school year of an equalizing county, city, or special school district, shall be included each school year in the minimum foundation school program of such equalizing county, city, or special school district for the purpose of school plant operation, maintenance services, fixed charges, and other expenses of general control; provided that school plant operation, maintenance services, fixed charges, and other expenses of general control shall be defined by the State Board of Education and approved by the State Commissioner of Education.

Section 5. *Be it further enacted*, That in order to determine the amount of funds which each equalizing county, including the cities and special school districts therein, shall raise from local sources as its part of the minimum foundation school program in that county for current operation and maintenance purposes for the public schools, grades one through twelve, the State Commissioner of Education shall, on the basis of data available the March 1 preceding the beginning of the next biennium:

(1) Calculate, for each fiscal year of the State, for each county for the next biennium, an economic index of each county's per cent of the total taxpaying ability, other than for public utilities, of all the counties of the State, which index for each county shall consist of the sum of the following: (a) the product obtained by multiplying .105 by the county's per cent of the State total motor vehicle registration payments for the three most recent years; (b) the product obtained by multiplying .069 by the county's per cent of the State total of farm products sold according to the most recent Federal Census of Agriculture; (c) the [fol. 223] product obtained by multiplying .136 by the county's per cent of the total number of gainfully employed non-government workers in the State, according to the

most recent Federal Census; and (d) the product obtained by multiplying .690 by the county's per cent of the State total of retail sales tax collections for the three most recent years. The data for motor vehicle registration payments and retail sales tax collections shall be furnished by the State Department having charge of such data; provided that the State Board of Education is hereby authorized to make such changes in the data of motor vehicle registration payments, the number of gainfully employed non-government workers and retail sales tax collections for Anderson County as in its discretion may be necessary to assure equity.

(2) Multiply the economic index for each county as derived in accordance with subsection (1) of this section, by the aggregate of the estimated value of locally assessed property in the State, Eight Billion, Two Hundred Fifteen Million, One Hundred Fifteen Thousand ($8,215,115,000.00) Dollars. The product obtained shall be the amount of the estimated relative true value of locally assessed property of the county. To this amount shall be added the assessed valuation of public utilities for that county as set forth in the most recent Tax Aggregate Report of Tennessee with such correction as may be made, in the discretion of the State Board of Education, to reflect the property equivalent valuation represented by payments made in lieu of taxes by the Tennessee Valley Authority, distributors of T. V. A. power, or other agencies of the United States.

(3) Calculate, for each county its per cent of the total estimated value of taxable property in the State determined as in the above.

[fol. 224] (4) Multiply each county's per cent of the total estimated value of taxable property determined as in subsection (3) of this section by Eighteen Million, One Hundred Twenty Thousand ($18,120,000.00) Dollars; and the product shall constitute the amount of funds which the county, as an equalizing county, shall raise, per annum, from local sources as its share of the cost of the minimum foundation school program for current operation and maintenance of the public schools, grades one through twelve; in no event, however, shall any county which was an equalizing county

for the fiscal school year 1953-54 and which received State equalizing funds as such be required to raise during either fiscal school year of the biennium 1959-61 more money locally from all sources for school purposes than it did raise as a requirement for participation in State equalizing funds for the fiscal school year 1953-54; provided, however, that the additional amount of State funds represented by the "guarantee" as set forth hereinabove in this subsection shall be limited to the amount of such "guarantee" as calculated for the school year 1958-59.

Where a county, city, or special school district receives Federal funds by virtue of being affected by the impact of Federal installations, the State Board of Education is hereby authorized to increase the amount of local funds required for such school system to participate in State funds, as provided in subsection (4) of this section, by the total amount, or any part thereof, of Federal funds so received.

SECTION 6. *Be it further enacted*, That in order to determine the amount of State minimum foundation school program equalizing funds for current operation and maintenance purposes for the public schools, grades one through [fol. 225] twelve, to be distributed each year to an equalizing county, city, or special school district for the public schools, grades one through twelve, the following procedure shall be used; From the total cost for the current school year of the minimum foundation school program for current operation and maintenance purposes, as defined in Section 4 of this Act, for the public schools, grades one through twelve, in the county, city, or special school district, there shall be subtracted the amount of its pro rata share, the share as between the county and the cities and special school districts therein to be based on the average daily attendance in grades one through twelve of the public schools during the preceding school year, of the local funds required to be contributed by the county as ascertained in Section 5 of this Act. The remainder shall represent the amount of State minimum foundation school program equalizing funds for current operation and maintenance purposes for the public schools, grades one through twelve, due the county, city, or special school district for the current school year.

NON-EQUALIZING SYSTEMS

SECTION 7. *Be it further enacted*, That if any county, city, or special school district shall elect not to participate in State equalizing funds or shall fail to comply with the requirements for participation in equalizing funds, there shall be distributed from the appropriation made in Section 2 of this Act for current operation and maintenance of the public schools of this State, grades one through twelve, to such county, city, or special school district in lieu of any payment of equalizing funds an amount equal to the sum of the following: (1) Seventeen ($17.00) Dollars per capita per pupil in average daily attendance in grades one through twelve, of the public schools during the preceding school [fol. 226] year; (2) Five Hundred ($500.00) Dollars per teaching position actually maintained during the current school year, provided that the number of teaching positions upon which the Five Hundred ($500.00) Dollar allowance shall be made shall not be greater than one such position for each twenty-five (25) pupils in average daily attendance in grades one through twelve, of the public schools during the current school year; (3) Five Hundred ($500.00) Dollars for each teacher of exceptional children in special education allowed and used under rules and regulations prescribed by the State Board of Education and approved by the State Commissioner of Education; (4) Five Hundred ($500.00) Dollars for one position of superintendent per county, city, or special school district actually maintained during the current year and for which no other provision has been made; (5) Eight Hundred ($800.00) Dollars per annum per position for system-wide positions allowed and used under the rules and regulations prescribed by the State Board of Education and approved by the State Commissioner of Education; (6) the increase in salary to which teachers, principal-teachers and superintendents allowed and used under the provisions of this section are entitled under the State salary schedule provided for in Section 10 of this Act over and above the salary schedule adopted by the State Board of Education for the school year 1948-49; and (7) salary supplement of school clerical employees and/or per capita amounts for clerical services as may be

allowed by the State Board of Education and approved by the State Commissioner of Education.

There shall be allocated from the appropriations made in Section 2 of this Act, subject to the provisions of Section 4 of this Act, an aggregate annual amount for the cost [fol. 227] of pupil transportation services in the non-equalizing counties; for the fiscal year beginning July 1, 1959, the amount of Eight Hundred Seventy-two Thousand ($872,000.00) Dollars is hereby allocated; and for the fiscal year beginning July 1, 1960, and for each fiscal year thereafter the amount of Eight Hundred Seventy-two Thousand ($872,000.00) Dollars is hereby allocated. The distribution of funds for pupil transportation purposes shall be made only to non-equalizing counties maintaining a transportation system approved by the State Board of Education, and the amount distributed to each non-equalizing county shall not exceed Eight ($8.00) Dollars per pupil in average daily attendance for the previous school year, who lives not less than one and one-half (1½) miles from the school to which he is assigned by the respective board of education and in which he is enrolled and transported at public expense, and an amount not to exceed Eight ($8.00) Dollars for each physically handicapped pupil who lives less than one and one-half (1½) miles from the school to which he is assigned by the respective board of education and in which he is enrolled and transported in accordance with the rules and regulations of the State Board of Education and approved by the State Commissioner of Education.

Section 8. *Be it further enacted*, That in order for any county, city or special school district to receive the State funds herein appropriated in Section 2 for the purpose of current operation and maintenance of the public schools, grades one through twelve, such county, city, or special school district shall meet the following conditions and requirements:

(1) *Equalizing and Non-Equalizing Systems*

[fol. 228] (a) Each county, city, or special school district shall pay the teachers, principal-teachers, superintendents, and other school personnel at least as much as is provided

in the State salary schedules prescribed by the State Board of Education and approved by the State Commissioner of Education, as herein provided.

(b) Each county, city, or special school district shall maintain a term of not less than two hundred (200) days which shall consist of the following: not less than one hundred seventy-five (175) days for classroom instruction; not less than ten (10) days vacation with pay for teachers under policies recommended by the local superintendent of schools and adopted by the local board of education; ten (10) days in-service training, according to a plan recommended by the local superintendent of schools and adopted by the local board of education; provided that a copy of such plan shall be filed with the State Commissioner of Education on or before September 1 of the current school year; and five (5) other days as designated by the local board of education upon the recommendation of the local superintendent of schools.

(c) Each county, city, or special school district in this State shall levy for current operation and maintenance not more than one school tax for all grades one through twelve, or for such of these grades as may be included in the local school program, and shall place in one separate school fund all school revenues for current operation and maintenance purposes received from the State, county, and other political subdivisions, if any, for school purposes. However, any non-equalizing county having within its borders cities or special school districts operating a system of public schools, [fol. 229] maintaining a system of public school transportation for grades one through twelve may levy a special tax for said purpose. In the event any non-equalizing county maintains a system of public school transportation for grades one through twelve, and elects to levy such special tax, the proceeds of the said special tax, together with such funds as may be received from the State for public school transportation purposes, shall be placed by the county trustee in a special account hereafter to be known as the "Public School Pupil Transportation Fund" and the same shall be disbursed on order of the county board of education for public school pupil transportation services only.

All school funds for current operation and maintenance purposes collected by any county, except the funds raised by any local special tax levy in a non-equalizing county for transportation purposes as hereinabove provided in this subsection, shall be apportioned by the county trustee among the counties, cities, and special school districts therein on the basis of the average daily attendance maintained by each in grades one through twelve during the current school year as defined in this subsection; provided, however, any county which was a non-equalizing county in 1955-56 and which has within its borders, a city or special district operating a system of public schools and which county in the current school year is an equalizing county which operates a system of public school transportation for grades one through twelve, may levy a special tax to cover that portion of the total cost of such public school transportation system as is over and beyond the allowed cost of pupil transportation within the minimum foundation school program of such equalizing county as determined under the provisions of Section 4, Subsection (2) of this Act. The proceeds of such special transportation tax levy shall be set up in a special account hereinafter to be known [fol. 230] as the "Public School Pupil Transportation Fund" and shall be disbursed on order of the county board of education for public school transportation services only. All school funds for current operation and maintenance purposes collected by any county, except the funds raised by any local special pupil transportation tax levy as authorized in this subsection, shall be apportioned by the county trustee among the county, city, and special school districts therein on the basis of the average daily attendance maintained by each in grades one through twelve, during the current school year. For the purposes of making the apportionment of local school funds as set forth in this subsection, and in defining the average daily attendance for the current school year, the county superintendent of schools and the county trustee shall be guided by the following procedure: (1) the county superintendent of schools shall recertify to the county trustee at the end of the first quarter of the current fiscal school year the average daily attendance in grades one through twelve during the pre-

ceding school year; (2) during each of the first and second quarters of the current fiscal school year the county trustee shall use the average daily attendance figure for the preceding school year as recertified to him by the county superintendent of schools, in making the tentative apportionments of the school funds, as provided for in this subsection during the first and second quarters of the current fiscal school year; (3) before the end of the third quarter of the current fiscal school year the county superintendent of schools shall certify to the county trustee the best estimate which he can make of the average daily attendance in grades one through twelve in the county schools and in the schools of the city and special school districts in such county, during the current school year, and upon this best estimate, the county trustee shall make the tentative apportionments of [fol. 231] school funds for the third quarter of the current fiscal school year; (4) as early as possible before the close of the current fiscal school year, the county superintendent of schools shall certify to the county trustee, the correct average daily attendance in grades one through twelve for the entire current school year; (5) whereupon, the county trustee shall apportion the entire amount of county school funds for the current school year in keeping with the provisions of this subsection, on the basis of the correct total average daily attendance in grades one through twelve during the current school year in the county schools and in the respective city and special district schools, making such adjustments as may be necessary on account of the tentative apportionments made to such school systems during the first three quarters of the current fiscal school year. However, any county school system, and any other school system in the same county, which have been dividing, or may decide to divide, local school funds on any different basis may continue or determine to do so by Act of the Legislature, as in Chapter 711 of the Private Acts of 1947, as amended.

(d) All schools in any county, city, or special school district shall meet the requirements of the State Board of Education for an approved school. No school in any county, city, or special school district shall be considered in determining the amount of the State school funds due such

county, city, or special school district unless it meets the requirements of the State Board of Education for an approved school.

(e) No tuition or fees shall be charged by any city or special school district except to pupils residing outside the city, or special school district. Tuition or fees which may [fol. 232] be charged to pupils residing outside the cities or special school districts but within the county in which the city or special school district is located shall not exceed per pupil, per annum, an amount equal to the amount of funds actually raised and used for current operation and maintenance purposes from the city, or special school district sources, including tuition and fees during the preceding school years, divided by the number of pupils in average daily attendance in the public schools of the city or special school district during the preceding school year.

(2) *Additional Conditions and Requirements for Equalizing Systems*

It is further provided that in order for any county, city, or special school district to share in State equalizing funds for current operation and maintenance of public schools, as provided in this Act, it shall comply, in addition to the conditions and requirements hereinbefore in this section, with the following conditions and requirements:

(a) The county, including the cities and special schools districts therein, shall raise for school purposes from local sources at least its share of the cost of the minimum foundation school program for current operation and maintenance purposes for public schools, grades one through twelve, as determined in the manner prescribed in Section 5 of this Act; provided, however, that nothing in this section shall prohibit the county, city, or special school district from budgeting and spending any local funds over and beyond the amount of local school funds required for participation in the State minimum foundation school program for the [fol. 233] public schools, grades one through twelve, for current operation and maintenance purposes, or for other school purposes.

(b) State equalizing funds received by a county, city or special school district shall be used exclusively for the operation and maintenance of the schools under the minimum foundation school program during the current fiscal school year unless otherwise provided in this Act. Outstanding school warrants and obligations of a preceding fiscal school year or years shall not be paid out of either the State equalizing funds for the current fiscal school year or the local funds required to be raised during the current fiscal school year for participation in the State equalizing funds.

(c) A city or special district participating in State minimum foundation school program equalizing funds for the public schools, grades one through twelve, for current operation and maintenance purposes, shall raise and expend annually for current operation and maintenance of the public schools in said city, or special school district, an amount of money in addition to the amount required to be raised by the county at least equal to that which a fifteen (15¢) cent tax levy on each One Hundred ($100.00) Dollars of taxable property for the current year in said city or special school district would produce if the same were all collected.

Section 9. *Be it further enacted*, That county, city, or special school district boards of education in counties which are adjacent to other states may contract with the appropriate local or state officials in the adjoining state for the education of children in grades one through twelve, provided that the board of education of the Tennessee county, city, or special school district and the State Commissioner of [fol. 234] Education determine that such an arrangement is the most economical way of providing a reasonable education for children under the jurisdiction of such boards. Such contract shall be executed by the appropriate board of education and approved by the State Commissioner of Education and the Attorney General of the State prior to the enrollment of such children in the schools of the other state. The cost of educating such children in accordance with the terms of such contracts shall constitute a part of

the costs of the minimum foundation school program of the respective county, city, or special school districts.

SECTION 10. *Be it further enacted*, That the State Board of Education shall formulate a State salary schedule to be effective for the school year 1959-60 which shall include as a base, a salary of at least Twenty-five Hundred Fifty ($2550.00) Dollars per school year consisting of a term of two hundred (200) days as hereinbefore defined in this Act for the beginning certificated teacher with a Bachelor's Degree from a college approved by the State Board of Education, with teachers having more training and experience to receive more than Twenty-five Hundred Fifty ($2550.00) Dollars per school year, and with teachers having less training and experience to receive less that Twenty-five Hundred Fifty ($2550.00) Dollars per school year; provided that such State salary schedule shall not be applicable to substitute teachers under the State sick leave plan. The minimum salary for the school year 1959-60 of a certificated teacher, principal-teacher, or superintendent with a Bachelor's Degree from an approved college and with fifteen (15) or more years of teaching experience, or experience as a principal or superintendent shall not be less than Thirty-three Hundred ($3300.00) Dollars per school year. The [fol. 235] salary schedule to be effective for the school year 1959-60 formulated by the State Board of Education as directed hereinabove in this paragraph, shall provide a salary increase for such category of training and experience over the salary schedule adopted by the State Board of Education for the biennium beginning July 1, 1957 under authority of Section 10, Chapter 53 of the Public Acts of 1957, of not less than One Hundred ($100.00) Dollars per school year. The State Board of Education shall formulate a State salary schedule to be effective for the school year 1960-61 which shall provide a salary increase for each category of training and experience over that for the school year 1959-60 of not less than One Hundred ($100.00) Dollars per school year. It is provided, however, that no salary increase shall be granted by the said salary schedule for either year of the biennium 1959-61 to any person teaching under the authority of a permit, unless such person pos-

sesses a valid certificate, or a Bachelor's Degree from a college approved by the State Board of Education. The salaries as prescribed in this paragraph shall be payable in at least ten (10) monthly installments during any school year.

The State salary schedule authorized in this section is hereby made applicable to every teacher, principal-teacher, and superintendent in every public school in this state, whether in counties, cities, or special school districts. The State salary schedule authorized in this section is also hereby expressly made applicable to teachers in the Tennessee School for the Blind, the Tennessee School for the Deaf, the Tennessee Preparatory School and the Alvin C. York Institute, but such salaries as provided by the above-mentioned schedule shall be paid solely out of the State appropriations made to said respective State schools.

[fol. 236] If any county, city, or special school district allowed any teacher, principal, or superintendent at the beginning of, or during the 1957-58 school term an amount in addition to the salary to which he would be entitled under the State salary schedule in effect at the beginning of or during the 1957-58 school term, which additional amount was paid entirely out of local funds, then, and in that event, said county, city, or special school district shall continue to pay such additional amount out of local funds, it being the legislative intent that every teacher, principal, and superintendent employed by any county, city, or special district shall receive an annual salary of not less than that contracted for as of the beginning of, or during the 1957-58 school term as defined hereinabove in this paragraph, plus the salary increases provided in this section; provided, however, that in any instance where the cognizant county, city, or special school district board of education determines that the salary paid to a teacher, principal, or superintendent during said period was disproportionate to the salaries paid to other teachers, principals, or superintendents with comparable tenure, education, and qualifications, in said county, city, or special school district, and was in excess of the State salary schedule for said period, the said

county, city, or special school district board of education shall be empowered to make such readjustment in the salary of said teacher, principal, or superintendent as may be necessary to place said salary in fair relation to the salaries of other teachers, principals, or superintendents in the same county, city, or special school district with comparable tenure, education, and qualifications; provided that any teacher, principal, or superintendent shall be entitled to a hearing before the county, city, or special school district board of education, as the case may be. However, in computing the salaries required to be maintained as pro- [fol. 237] vided hereinabove in this paragraph, only that part thereof paid under the authority of any political subdivision of this State need be maintained and no county, city, or special school district shall be required to supply any decrease in funds formerly available to supplement salaries. Provided further, however, that the State Board for Vocational Education is authorized, in its discretion, to make such adjustments in State supplements of vocational funds as are necessary to establish a uniform State salary schedule for teachers of vocational subjects.

The salaries provided by the above-mentioned schedule authorized in this section are intended to apply to full-time teachers, principal-teachers and superintendents. The salary per annum for a part-time teacher, principal-teacher, or superintendent shall be proportionately less than that herein provided for full-time personnel.

Nothing in this Act shall prevent any county, city, or special school district from supplementing from its own local funds over and beyond those local funds required for participation in State funds any salaries allowed under the State salary schedule authorized in this section.

Whereas, it is recognized that public education is one of the important bedrocks upon which our country is being built; and, whereas, well-trained and dedicated teachers are necessary to the proper training of our citizenry; it is the intent of the Legislature and is hereby so declared that the salary schedule as recommended by the Legislative Council Report, ranging from Thirty-six Hundred ($3600.00) Dollars per year of ten (10) months for a beginning teacher holding a Bachelor's Degree with twelve (12) years

[fol. 238] of teaching experience, with appropriate increases for other levels of training and experience, shall be a goal which shall be attained from both State and local funds as early as the economic condition of the State will permit. It is further declared to be the legislative intent that when such range of from Thirty-six Hundred ($3600.00) Dollars for a beginning teacher with a Bachelor's Degree, to Fifty-four Hundred ($5400.00) Dollars for a teacher with a Bachelor's Degree and twelve (12) years of teaching experience, with appropriate increases for other levels of training and experience, has been reached with State and local funds, no local supplement which is being paid shall be required to be continued beyond the amount which, when added to the amount of minimum school program funds provided by the State to the teachers through an equalizing or a non-equalizing school system, totals a sum equal to the amount of the salary of the teacher within such range of from Thirty-six Hundred ($3600.00) Dollars to Fifty-four Hundred ($5400.00) Dollars, depending upon the teaching experience of the teacher.

Section 11. *Be it further enacted,* That there is hereby allocated from the appropriation made in Section 2 of this Act, for the current operation and maintenance of the public schools of this State, grades one through twelve, for the fiscal year beginning July 1, 1959 Three Hundred Fifty Thousand ($350,000.00) Dollars, and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter Four Hundred Thousand ($400,000.00) Dollars for the purpose of providing special educational services, of reimbursing local school systems for salaries paid to teachers in hospitals and convalescent homes for exceptional children in Tennessee in grades one through twelve, and of providing [fol. 239] in-service training for teachers of exceptional children in Tennessee. Such amounts shall be expended under the rules and regulations of the State Board of Education, as approved by the State Commissioner of Education and as prescribed and defined in Sections 49-2901 and 49-2902 of Tennessee Code Annotated; provided that special educational services shall be interpreted to mean the "excess cost" of special transportation and such measures that may be necessary for the adjustment of exceptional children and for providing for their education in the public schools; pro-

vided further that such "excess cost" for special educational services for exceptional children shall be administered in accordance with objective standards prescribed by the State Board of Education and approved by the State Commissioner of Education; and provided further that in no case shall such "excess cost" amount to more than Three Hundred ($300.00) Dollars per school year, per child.

The State Commissioner of Education may, at his discretion, under rules and regulations of the State Board of Education, as approved by him, reimburse to the extent provided in such rules and regulations, with funds herein allocated in this section, counties, cities, and special school districts for expenditures incurred by such counties, cities, or special school districts for providing, on an experimental basis, educational services for blind or deaf children; the provisions of Section 49-2901 of the Tennessee Code Annotated or any law of this State notwithstanding.

Section 12. *Be it further enacted*, That approximately one-third (1/3) of the estimated total of State funds appropriated under Section 2 of this Act and distributed under the provisions of this Act, for the current operation and [fol. 240] maintenance of the public schools of this State, grades one through twelve, for the school year shall be distributed on or about August 15 but not later than September 10; approximately one-third (1/3) of the estimated total for the school year shall be distributed on or before November 15; approximately two-ninths (2/9) of the estimated total for the school year shall be distributed on or before February 15, and the amount of the remainder due each county, city, and special school district for the school year shall be determined on or about May 20 of such school year, or as near this date as the State Commissioner of Education shall be filed by said county, city, or such remainder due shall be determined on the basis of the records which such county, city, and special school district shall furnish the State Commissioner of Education on forms prescribed by him. The actual delivery of the warrant covering the final distribution to a county, city, or special school district shall not be made until after all records required by the State Commissioner of Education have been

furnished. Before a full and complete settlement is made with any county, city, or special school district of the State for any year, all records and reports required by the State Commissioner of Education shall be filed by said county, city, or special school district, with the State Commissioner of Education. Each county, city, and special school district shall within fifteen (15) days after the beginning of each of its fiscal school years, submit to the State Commissioner of Education, on forms prescribed by him, a complete and certified copy of its entire school budget for the current school year. Each county, city, and special school district shall on or before July 15 of each year submit to the State Commissioner of Education on forms prescribed by him, a correct and accurate financial report of the receipts and expenditures for all public school purposes in each county, [fol. 241] city, or special school district, during the school year ending on the June 30 next preceding the July 15 hereinabove set forth. The county trustee of each county and the treasurer or fiscal agent of each city or special school district shall submit to the State Commissioner of Education on or before July 15 of each school year a complete certified copy of their respective financial reports, on forms prescribed by the State Commissioner of Education. No distribution of funds shall be sent to any county, city, or special school district which has not furnished the State Commissioner of Education with all records and reports required by this Act and by other laws for the current or the preceding school year.

In making distribution of State funds to the counties, cities, and special school districts, no allowance shall be made by the State for the average daily attendance or teaching positions in any county, city, or special district school in which the right to exercise authority of the respective local superintendent of schools and the local board of education is not as full and ample in all phases of the school program as in any other school of the said county, city, or special school district.

Section 13. *Be it further enacted*, That in the event that the appropriations made by the Legislature in Section 2 of this Act for the current operation and maintenance of the public schools of this State, grades one through twelve,

are insufficient to meet the State's obligations for the current operation and maintenance of the public schools of this State, grades one through twelve, as provided for in this Act, the State Commissioner of Education is hereby directed to make reduction in the amount of State funds for which each equalizing and non-equalizing county, city, [fol. 242] or special school district may qualify for current operation and maintenance of public schools, grades one through twelve. The percentage of reduction shall be the same for all counties, cities, and special school districts.

SECTION 14. *Be it further enacted,* That for the purpose of purchasing textbooks, repairing and rebinding textbooks for the public schools of this state, grades one through twelve, there is hereby appropriated Two Million, Four Hundred Thousand ($2,400,000.00) Dollars for the fiscal year beginning July 1, 1959, and subject to the provisions of Section 39 of this Act, Two Million, Three Hundred Fifty Thousand ($2,350,000.00) Dollars for the fiscal year beginning July 1, 1960 and each fiscal year thereafter, out of the treasury of the State, which sums shall be distributed by the State Commissioner of Education among the counties, cities, and special school districts operating a system of public schools as herein provided in this section.

(1) The State Commissioner of Education shall distribute on or about August 1 of each year to each county, city, and special school district operating a system of public schools a per capita amount of Three ($3.00) Dollars, per annum, per pupil in average daily attendance during the preceding school year.

(2) The State Commissioner of Education shall determine for each county, city, and special school district, the amount of increase, if any, in average daily attendance of pupils for the immediate past school year over that of the school year preceding. He shall then add an additional amount to that provided in (1) above for each county, city, and special school district in which such an increase has [fol. 243] occurred, which amount shall be calculated by multiplying a per capita of Eight ($8.00) Dollars, or such per capita as shall be fixed by him, by the number of the

increase in the pupil average daily attendance as hereinbefore described.

The amount distributed under the provisions of this section shall be placed in a special fund or account by the county trustee, or by the treasurer or proper fiscal officer of the city or special school district and shall be expended only on regular school warrants, or checks marked "State Textbook Funds."

It is the legislative intent, and so expressly declared, that the board of education of each county, city, and special school district shall purchase the necessary textbooks early enough that the pupils shall have the textbooks available to them when the schools open. The board of education of each county, city, and special school district shall furnish such textbooks as are listed by the State Textbook Commission for adoption and as have been adopted by the board of education of such county, city, or special school district and as are required for the use of pupils by the said board of education. The list of textbooks by grades, which are to be furnished pupils, shall be filed with the State Commissioner of Education by August 1 of each year, on forms prescribed by him. The superintendent of schools and the chairman of the board of education of each county, city, and special school district shall certify to the State Commissioner of Education on or before December 1 of the current school year, on forms prescribed by the said Commissioner, that all children enrolled in that school system have been furnished all required textbooks. All books purchased with funds apportioned under this section [fol. 244] are, and the same shall remain, the property of the board of education purchasing them, and the said board of education shall establish such policies as it deems necessary for the care and protection of said textbooks. No board of education of any public school system shall require any pupil or parent to purchase any textbooks whatsoever; but nothing in this section shall prohibit any pupil or parent from voluntarily purchasing textbooks.

All State textbook funds apportioned to a county, city, or special school district under the provisions of this section shall be used exclusively for the purchase of textbooks at wholesale prices, plus freight from Nashville, and the repair and rebinding of textbooks.

It is further provided, however, that the county trustee shall not be required to place the said textbook funds in a special fund or account in the event of the following: (1) That the State Commissioner of Education approves the system of controls and records of the respective superintendent and board of education to be used for the expending, accounting, and reporting of the said funds; and (2) the State Comptroller upon being so informed by the State Commissioner of Education gives notice to the said trustee that it is not necessary for him to maintain such fund or account.

SECTION 15. *Be it further enacted,* That for the purpose of capital outlay, including the purchase and improvement of sites, the construction of buildings, the major repairs of buildings of a capital outlay nature, the purchase of equipment for schools and school buildings and the purchase of pupil transportation equipment, for the public schools of this State, grades one through twelve, there is [fol. 245] hereby appropriated for the fiscal year beginning July 1, 1959, Eight Million, Three Hundred Thousand ($8,300,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and for each fiscal year thereafter there is hereby appropriated, subject to the provisions of Section 39 of this Act, Eight Million, Four Hundred Thousand ($8,400,000.00) Dollars out of the treasury of the State, which sums shall be distributed among the several counties, including the cities and special school districts therein, of the State upon the conditions hereinafter prescribed in this section.

(1) There shall be a foundation school program for capital outlay for the public schools of the State, grades one through twelve, and the annual cost thereof for each county, city, and special school district shall be determined on the basis of a per capita amount per pupil in average daily attendance during the preceding school year, such amount to be fixed by the State Board of Education and approved by the State Commissioner of Education.

(2) There shall be calculated for each fiscal year the cost of the foundation school program for capital outlay for each county, including the cities and special school

districts therein, and for the State as a whole as provided in subsection (1) of this section.

(3) Forty-two and one-half (42½%) per cent of the aggregate cost of the foundation school program for capital outlay for the entire State shall be determined in order to ascertain the aggregate amount of funds assumed to be available locally in support of the foundation school program for capital outlay.

(4) The amount of funds which each county, including [fol. 246] the cities and special school districts therein, shall be assumed to have available locally for the support of the foundation school program for capital outlay shall be determined by applying the county's per cent of the total estimated true value of taxable property in the State as determined in Section 5 of this Act, to the aggregate amount of funds assumed but not required to be available locally, determined as in subsection (3) of this section.

(5) The amount of funds assumed to be available locally in a county for the support of the foundation school program for capital outlay, as determined in subsection (4) of this section, shall be subtracted from the cost of the foundation school program for capital outlay for each county, as determined in subsection (2) of this section, and the remainder shall be the amount of State capital outlay funds which the county, including the cities and special school districts therein, shall receive; provided that no county, including the cities and special school districts therein, shall receive less State school capital outlay funds annually than was distributed to such county for school capital outlay purposes including residue funds distributed under Section 18, Chapter 9, Public Acts of 1949 for the fiscal year 1950-1951.

The capital outlay funds to be distributed to a county, including the cities and special school districts therein, shall be apportioned by the State Commisioner of Education between the county and cities and special school districts therein operating a system of public schools, on the basis of the number of teaching positions allowed and maintained in grades one through twelve during the preceding school year in such county and in the respective cities and special school districts therein operating a system of [fol. 247] public schools; provided that the amount appro-

priated and apportioned under this section shall be distributed to the county trustee, or the appropriate fiscal officer of the city, or special school district, as provided in Section 19 of this Act, in three installments, approximately one-fourth (¼) on or about August 1, approximately one-fourth (¼) on or about January 15, and the remainder on or about April 15 of each year.

An amount not to exceed fifteen (15%) per cent of the county's share of any fund distributed to any county under the provisions of this section may be used for the operation of privately owned pupil transportation equipment on a contract basis. The amount of funds so distributed to the respective counties, cities, and special school districts under the provisions of this section may be used in the discretion of the county, city, or special school district board of education for the payment of the principal and interest on any bonds of original issue, or other forms of legal indebtedness of original issue, issued by said county, city, or special school district for school capital outlay purposes since July 1, 1947, including school bonds refunding school capital outlay of bonds of original issue since July 1, 1947.

State funds for public schools, grades one through twelve, for capital outlay purposes distributed under the provisions of this section shall be placed in a special fund or account by the county trustee, or by the treasurer or proper fiscal officer of the city, or special school district, and shall be expended only on regular school warrants, or checks, marked "State Capital Outlay School Funds."

The State funds for the public schools, grades one through twelve, for capital outlay purposes distributed under the [fol. 248] provisions of this Act shall be obligated and/or expended only according to a plan recommended by the local superintendent of schools and approved by the local board of education and filed with the State Commissioner of Education, on forms prescribed by him, on or before August 1 of the current school year; provided that such plan may be amended during the school year to meet changing conditions or emergencies but such amendment shall be filed with the State Commissioner of Education before any funds referred to hereinabove in this paragraph shall be obligated or expended for the purpose of the amendment.

The State Board of Education is hereby authorized to establish minimum standards for school sites, school attendance centers, the construction of buildings for school purposes, the major repairs of buildings for school purposes of a capital outlay nature, and for equipment for buildings for school purposes. No county, city, or special school district board of education shall obligate or expend any State or local school funds for any project of a capital outlay nature which does not conform to the standards adopted by the State Board of Education as authorized in this paragraph.

The State Board of Education is hereby authorized and directed to establish minimum standards for school sites and buildings for the approval of schools.

SECTION 16. *Be it further enacted*, That there is hereby appropriated the sum of Three Hundred Forty Thousand ($340,000.00) Dollars, per annum, from the treasury of the State for the reimbursement of the counties, cities, and special school districts for payments made by them for [fol. 249] substitute teachers who are teaching for teachers on sick leave, but this appropriation is subject to all the restrictions and conditions set forth herein and in Section 49-1314 of Tennessee Code Annotated. The reimbursement made under this appropriation to any county, city, or special school district shall not exceed one-half of the payments made by such county, city, or special school district for substitute teachers teaching for teachers who are on sick leave, but in any event the contribution of the State shall not exceed Three ($3.00) Dollars per day per substitute teacher. Before any county, city, or special school district can participate in the appropriations made in this section, it shall conform to the requirements set forth in Section 49-1314 of Tennessee Code Annotated. Participation in the sick leave plan provided by this section shall be optional with the local school system.

It shall not be necessary for substitute teachers substituting for regular teachers on sick leave under the provisions of this section to possess a teacher's certificate, or permit.

Under rules and regulations to be prescribed by the State Board of Education, and approved by the State Commissioner of Education, there shall be distributed to each

county, city, and special school district complying with all such requirements an amount not to exceed Three ($3.00) Dollars per day for each substitute teacher employed by local school systems sharing in the benefits of this section; provided that the amount distributed by the State shall in no event exceed one-half of the amount paid per day by the local school system to the substitute teacher, and the State's contribution shall in no event exceed Three ($3.00) Dollars per day. The total amount which the State shall be required [fol. 250] to contribute to match payments to substitute teachers under this section shall not exceed Three Hundred Forty Thousand ($340,000.00) Dollars per annum.

Nothing in this section shall be construed as prohibiting any county, city, or special school district from paying more than Six ($6.00) Dollars per day to a substitute teacher, but any amount in excess of Six ($6.00) Dollars per day shall be paid entirely from local funds.

SECTION 17. *Be it further enacted*, That if as of July 1 of any school year there has been a change since the beginning of the previous school term in the boundaries of a city, or special school district and/or the creation or reactivation of a city, or special district school system involving the shift of pupils from one school system to another, then, and in that event, in the distribution of any funds appropriated by this Act, whether for current operation and maintenance, capital outlay, textbooks, or otherwise, to a county having within its boundaries any such city, or special school district operating a system of public schools, grades one through twelve, the following shall apply:

The State Commissioner of Education shall determine on the basis of information submitted to him by the appropriate boards of education, the average daily attendance of pupils residing in such affected area and the number of teaching positions, if any, involved in such shift, and shall make such adjustments in the pupil average daily attendance and/or the number of teaching positions as may be necessary to effectuate an equitable distribution and division of funds as between the county and any city, or special school district operating a system of public schools therein, and such adjusted pupil average daily attendance and/or [fol. 251] teaching positions shall be used in making the

apportionment and distribution of any funds appropriated by this Act, whether for current operation and maintenance, capital outlay, textbooks, or otherwise; provided, however, that before any school system which is reactivated or newly created after July 1, 1958, shall participate in the apportionment of any State school funds, or share in the apportionment of any county school funds during any biennium, the chief fiscal agent of the county, city, or special district in which said school system is located, shall certify to the State Commissioner of Education on or before March 1 preceding the pertinent biennium that such county, city, or special school district has met all requirements for participation in State school funds, and furthermore such certification shall be accompanied by such evidences of compliance as the State Commissioner of Education may require.

SECTION 18. *Be it further enacted*, That the State Commissioner of Education is hereby expressly authorized to prescribe a system of school fiscal accounting for all counties, cities, and special school districts. The State Commissioner of Education is hereby expressly authorized to check the fiscal public school records in any or all counties, cities, or special school districts to the end that the expenditure of such funds, whether for current operation and maintenance purposes, capital outlay purposes, or other school purposes, shall be properly accounted for and safeguarded. Any city or special district school system shall deliver to the State Commissioner of Education, upon a request from him, a copy of the audit report of the school funds of the said city or special district school system. Each county, city, or special school district board of education shall issue school warrants, or checks, on or before June 30 of each [fol. 252] fiscal year for all contracts and other fiscal transactions for current operation and maintenance purposes for the current school year which have been completed by June 15 of the current school year.

SECTION 19. *Be it further enacted*, That the funds appropriated and distributed for the public schools, grades one through twelve, under the provisions of this Act to a county for county schools shall be paid to the county trustee

in the amounts as certified under the authority of the State Commissioner of Education. Such funds for city schools, or for special district schools, shall be distributed directly to the treasurer or proper fiscal agent of such city or special school district in the amounts as certified under the authority of the State Commissioner of Education. The county trustee shall be properly bonded as now provided by law and the county judge, or chairman of the county court, shall so certify to the State Commissioner of Education. The city and special school district treasurer or fiscal agent shall be bonded under standards set up by the State Comptroller, and the chairman of the board of education of such city, or special school district, shall so certify to the State Commissioner of Education.

SECTION 20. *Be it further enacted*, That should it develop that by error an allocation of funds has been made to any county, city, or special school district not entitled to receive the same by virtue of a failure to comply with the requirements of this Act, or otherwise, or if it should develop that more funds have been distributed to any county, city, or special school district than such county, city, or special school district is entitled to receive under the provisions of this Act, such amount so erroneously dis-[fol. 253] tributed to such county, city, or special school district shall be returned to the State Treasury by such county, city, or special school district; and upon a failure to do so, the State Commissioner of Education is hereby expressly authorized and directed to retain and withhold the amount thereof from any funds available for distribution to such county, city, or special school district in the current, or any subsequent school year.

If any school funds are misappropriated or illegally expended by a county, city, or special school district, an amount equivalent thereto shall be returned to the proper county, city, or special district school fund; and upon a failure to do so, the State Commissioner of Education is hereby expressly authorized and directed to retain and withhold the amount thereof from any funds available for distribution to such county, city, or special school district in the current, or any subsequent school year.

Whenever it shall appear to the Commissioner of Education from the report of any school official, or from any other reliable source, that any portion of the school fund has been lost, misappropriated, or in any way illegally disposed of, or not collected, or is in danger of loss, misappropriation, illegal disposition, or failure of collection, it shall be the duty of the said Commissioner to call upon the District Attorney General of the judicial circuit, or county judge, chairman of the county court, or county attorney of the county, to protect, recover, or take action to enforce the collection of such funds, provided the Governor shall first give his approval to such action. This provision, however, shall not prohibit suits by one political subdivision against another political subdivision in the same county or against the county when the consent of the State Commis- [fol.254] sioner of Education and the Governor has not been obtained. The State Commissioner of Education, with the consent of the Governor and with the approval of the Attorney General, is hereby authorized to employ private legal counsel in order to protect, recover, or force collection of any school funds.

SECTION 21. *Be it further enacted,* That the State Commissioner of Education is hereby authorized and empowered to withhold minimum foundation school program funds for current operation and maintenance for public schools, grades one through twelve, or capital outlay funds distributed under the provisions of this Act, or both, from any county, city, or special school district system which has within such school system a school which does not meet the requirements of the State Board of Education for an approved school.

OTHER SCHOOL SERVICES

SECTION 22. *Be it further enacted,* That,

(a) There is hereby appropriated for vocational education the sum of One Million, One Hundred Twenty-three Thousand ($1,123,000.00) Dollars, per annum. Said appropriation for vocational education shall be administered by the State Board for Vocational Education through the executive officer of said Board, in accordance with the State plan for vocational education, drawn up by said State Board

for Vocational Education and approved by the U. S. Office of Education. The said appropriation for vocational education shall be used to match, as required by Federal statute, funds appropriated and paid over by the Federal government for the same purpose as the appropriation made for [fol. 255] vocational education. All expenses of administration of the funds appropriated for vocational education shall be paid from such appropriation, as supplemented by funds received from the Federal government; and,

(b) There is hereby appropriated for the vocational training program the sum of Four Hundred Forty-seven Thousand ($447,000.00) Dollars, per annum. Said appropriation for the vocational training program shall be administered by the State Board for Vocational Education through the executive officer of said Board, in accordance with the State plan for vocational education, drawn up by said State Board for Vocational Education and approved by the U. S. Office of Education. The said appropriation for the vocational training program shall be used to match, as required by Federal Statute, funds appropriated and paid over by the Federal government for the same purpose as the appropriation made for the vocational training program.

Section 23. *Be it further enacted*, That there is hereby appropriated for the fiscal year beginning July 1, 1959, for vocational rehabilitation the sum of Six Hundred Thousand ($600,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and for each fiscal year thereafter, there is hereby appropriated the sum of Six Hundred Thousand ($600,000.00) Dollars out of the treasury of the State. The said appropriation for vocational rehabilitation shall be administered by the State Board for Vocational Education through the executive officer of the said board, in accordance with a State plan for vocational rehabilitation, drawn up by said State Board for Vocational Education and approved by the U. S. Office of Vocational Rehabilitation.

[fol. 256] Section 24. *Be it further enacted*, That for the purpose of providing for an in-service training program for school personnel and for the purpose of up-grading the professional personnel of the State Department of Educa-

tion, there is hereby appropriated the sum of Forty-five Thousand ($45,000.00) Dollars, per annum, which sum shall be expended by the State Commissioner of Education for such item or items, or purpose or purposes, as the said Commissioner may deem necessary in order to properly effectuate such programs as are herein authorized; provided that where teacher training is involved, a cooperative plan shall be entered into between the State Department of Education and such colleges and universities as the State Commissioner of Education shall designate.

SECTION 25. *Be it further enacted,* That all agencies, bureaus, and departments contributing to the in-service training of school personnel and/or participating in the program of public education in any manner shall channel their efforts through the office of the State Commissioner of Education.

SECTION 26. *Be it further enacted,* That for the operation and maintenance of the special State schools, there is hereby appropriated the following sums:

Alvin C. York, Agricultural Institute for the fiscal year beginning July 1, 1959, One Hundred Two Thousand ($102,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter there is hereby appropriated the sum of One Hundred Two Thousand ($102,000.00) Dollars;

Tennessee School for the Blind for the fiscal year beginning July 1, 1959, Three Hundred Twenty-five Thousand [fol. 257] ($325,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter there is hereby appropriated the sum of Three Hundred Thirty-five Thousand ($335,000.00) Dollars;

Tennessee School for the Deaf for the fiscal year beginning July 1, 1959, Five Hundred Thirty Thousand ($530,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter there is hereby appropriated the sum of Five Hundred Forty Thousand ($540,000.00) Dollars;

Tennessee Preparatory School for the fiscal year beginning July 1, 1959, Five Hundred Sixty Thousand ($560,000.00) Dollars; and for the fiscal year beginning July 1,

1960, and each fiscal year thereafter there is hereby appropriated the sum of Five Hundred Ninety Thousand ($590,000.00) Dollars.

SECTION 27. *Be it further enacted*, That there is hereby appropriated the sum of Five Thousand ($5,000.00) Dollars, per annum, for the biennium 1959-61 to provide scholarships for the graduates and for upgrading the training of the faculty of the Tennessee School for the Blind; Five Thousand ($5,000.00) Dollars, per annum, for the biennium 1959-61 to provide scholarships for the graduates and for upgrading the training of the faculty of the Tennessee School for the Deaf; and Five Thousand ($5,000.00) Dollars, per annum, for the biennium 1959-61 to provide scholarships for the graduates and for upgrading the training of the faculty of the Tennessee Preparatory School. Such sums shall be used to provide said scholarships for such of these graduates as meet the qualifications as prescribed by the State Board of Education, and to upgrade the training of the faculty of said State institutions, under [fol. 258] policies adopted by the State Board of Education. Said graduates shall be selected by the State Commissioner of Education and the superintendents of the respective schools. Any graduates selected under the provisions of this section may continue to study any course in any school, or institution which he or she desires to attend, and which is approved by the State Commissioner of Education and the superintendent of the respective school. The upgrading of the training of the faculties shall be administered by the superintendents of the respective schools under the approval of the State Commissioner of Education.

SECTION 28. *Be it further enacted*, That there is hereby appropriated for the State Department of Education, for the fiscal year beginning July 1, 1959, the sum of One Million, Two Hundred Eighty-one Thousand, Five Hundred ($1,281,500.00) Dollars; and for the fiscal year beginning July 1, 1960, and for each fiscal year thereafter there is hereby appropriated the sum of One Million, Two Hundred Eighty-five Thousand, Five Hundred ($1,285,500.00) Dollars, which sums shall be used for the maintenance and operation of such department of education, including the

provision of administrative services for exceptional children; provided that out of the appropriations made in this section for the State Department of Education, an amount not to exceed Four Hundred Sixty-two Thousand, Five Hundred ($462,500.00) Dollars for the fiscal year beginning July 1, 1959, and an amount not to exceed Four Hundred Sixty-two Thousand, Five Hundred ($462,500.00) Dollars for the fiscal year beginning July 1, 1960, and for each fiscal year thereafter, may be used to match, as required by Federal statute, funds appropriated and paid over by the Federal government under the National Defense Education Act of 1958.

[fol. 259] SECTION 29. *Be it further enacted*, That there is hereby appropriated for the Educational Television Commission for the fiscal year beginning July 1, 1959, Fifty Thousand ($50,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and for each fiscal year thereafter there is hereby appropriated Fifty Thousand ($50,000.00) Dollars, to be expended under the provisions as set forth in Chapter 254 of the Public Acts of 1955.

SECTION 30. *Be it further enacted*, That for the operation and maintenance of various State colleges, there are hereby appropriated the following sums:

East Tennessee State College, Johnson City, for the fiscal year beginning July 1, 1959, One Million, One Hundred Twenty-eight Thousand ($1,128,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, there is hereby appropriated the sum of One Million, Three Hundred Twenty Thousand ($1,320,000.00) Dollars;

Middle Tennessee State College, Murfreesboro, for the fiscal year beginning July 1, 1959, Nine Hundred Fifteen Thousand ($915,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, there is hereby appropriated the sum of One Million, Seventy Thousand ($1,070,000.00) Dollars;

Memphis State University, Memphis, for the fiscal year beginning July 1, 1959, One Million, Two Hundred Thousand ($1,200,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, there

is hereby appropriated the sum of One Million, Three Hundred Eighty-five Thousand ($1,385,000.00) Dollars;

[fol. 260] Tennessee Polytechnic Institute, Cookeville, for the fiscal year beginning July 1, 1959, One Million, Twenty-two Thousand ($1,022,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, there is hereby appropriated the sum of One Million, One Hundred Thirty-five Thousand ($1,135,000.00) Dollars;

Austin Peay State College, Clarksville, for the fiscal year beginning July 1, 1959, Six Hundred Seventy-five Thousand ($675,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, there is hereby appropriated the sum of Seven Hundred Ten Thousand ($710,000.00) Dollars;

Tennessee Agricultural & Industrial State University, Nashville, for the fiscal year beginning July 1, 1959, Two Million, Fifty Thousand ($2,050,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, there is hereby appropriated the sum of Two Million, One Hundred Thousand ($2,100,000.00) Dollars.

It is the legislative intent and such is hereby expressed, that no part of the annual sum herein appropriated for the Tennessee Agricultural & Industrial State University at Nashville shall revert to the General Fund of the State at the end of any fiscal period. In the event that any amount of the annual sum herein appropriated shall remain unexpended and unobligated at the end of any fiscal period, such unexpended and unobligated amount shall be carried forward into the next fiscal period and shall be available to the said university.

SECTION 31. *Be it further enacted*, That for the purpose of providing an in-service training program to upgrade [fol. 261] the professional personnel of the State colleges and universities operating under the State Board of Education, and to upgrade the professional personnel of the University of Tennessee, operating under the board of trustees of the University of Tennessee, such State Board of Education and such board of trustees of the University of Tennessee are hereby authorized to allocate an in-service

training fund to each of the State colleges and universities operating under the respective control of each board; provided that the amount of each such in-service training fund shall be paid solely out of the State appropriations made to the respective State colleges and universities and expendable receipts; and provided further that the expenditures for the respective State colleges and universities operating under the State Board of Education shall be made only as approved by the State Commissioner of Education under policies adopted by the State Board of Education; and provided further that such expenditures for the University of Tennessee shall be made only as approved by the President of the University of Tennessee under policies adopted by the board of trustees of the University of Tennessee.

SECTION 32. *Be it further enacted,* That there is hereby appropriated for the University of Tennessee for the fiscal year beginning July 1, 1959, the sum of Nine Million, Three Hundred Thirty Thousand ($9,330,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter there is hereby appropriated the sum of Nine Million, Six Hundred Thirty Thousand ($9,630,000.00) Dollars out of the treasury of the State, to be expended as follows:

(1) For the maintenance, operation, and development of the University, for the fiscal year beginning July 1, 1959, [fol. 262] Seven Million, Five Hundred Thousand ($7,500,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, Seven Million Eight Hundred Thousand ($7,800,000.00) Dollars;

(2) For the Cooperative Agricultural Extension Work, for the fiscal year beginning July 1, 1959, Nine Hundred Eighty Thousand ($980,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, Nine Hundred Eighty Thousand ($980,000.00) Dollars;

(3) For the University of Tennessee Agricultural Experiment Stations, for the fiscal year beginning July 1, 1959, Seven Hundred Thousand ($700,000.00) Dollars; and

for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, Seven Hundred Thousand ($700,000.00) Dollars;

(4) For the University of Tennessee Municipal Technical Advisory Service, for the fiscal year beginning July 1, 1959, Fifty Thousand ($50,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, Fifty Thousand ($50,000.00) Dollars;

(5) For the University of Tennessee Memorial Research Hospital, for the fiscal year beginning July 1, 1959, One Hundred Thousand ($100,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, One Hundred Thousand ($100,000.00) Dollars.

The sum of Nine Hundred Eighty Thousand ($980,000.00) Dollars, per annum, for the Cooperative Agricultural Extension Work is appropriated as provided by Chapter 81 of the Public Acts of 1929 as codified in Tennes- [fol. 263] see Code Annotated as Sections 49-3401 through 49-3408. This appropriation is to be made in lieu of the continuing appropriations made by such Act, but the disbursements and management of said funds shall be, in all respects, governed by the provisions of the aforesaid Act, as codified in Tennessee Code Annotated.

No portion of the funds herein appropriated for the use and benefit of the University shall be used for the payment of interest upon any bonds which are the general obligation of the State.

SECTION 33. *Be it further enacted*, That there is hereby appropriated for the fiscal year beginning July 1, 1959, the sum of One Hundred Fifty Thousand ($150,000.00) Dollars; and for the fiscal year beginning July 1, 1960, and each fiscal year thereafter, there is hereby appropriated the sum of One Hundred Fifty Thousand ($150,000.00) Dollars for the Board of Control for Southern Regional Education, and such sums shall be used for the operation and maintenance of Meharry Medical College at Nashville, and for Regional Institutions for veterinary medical training, and for general expenses, as provided in the Compact for Southern Regional Education adopted by Tennessee and other

southern states on February 8, 1948, as amended, Sections 49-3601 through 49-3603 of Tennessee Code Annotated.

TEACHERS' RETIREMENT

SECTION 34. *Be it further enacted,* That there is hereby appropriated the following amounts for the Tennessee Teachers' Retirement System in keeping with the provisions of Chapter 29 of the Public Acts of 1945, as amended, [fol. 264] as codified in Sections 49-1501 through 49-1560, inclusive, of Tennessee Code Annotated, or as Sections 49-1501 through 49-1560, inclusive, of Tennessee Code Annotated may be amended:

	1959-60	1960-61
1. Retirement Accumulation Fund	$6,050,000.00	$6,210,000.00
2. Social Security Contributions	1,590,000.00	1,840,000.00
3. Minimum Benefit Fund	525,000.00	525,000.00
Total Teachers' Retirement	$8,165,000.00	$8,575,000.00

SECTION 35. *Be it further enacted,* That there is hereby appropriated the sum of Twenty-four Hundred ($2400.00) Dollars, per annum, for the biennium 1959-61 for the retirement pensions, Schools for the Deaf, Knoxville, which sum shall be expended as provided in Section 49-3109 of Tennessee Code Annotated.

SECTION 36. *Be it further enacted,* That there is hereby appropriated for the fiscal year beginning July 1, 1959, Twenty Thousand Nine Hundred ($20,900.00) Dollars, and for the fiscal year beginning July 1, 1960 and each fiscal year thereafter, Nineteen Thousand, Seven Hundred ($19,-700.00) Dollars to provide the payment of monthly retirement allowance to certain aged teachers. Such sums shall be expended as provided in Section 49-1311 through 49-1312 of Tennessee Code Annotated.

[fol. 265] LIBRARY AND ARCHIVES

SECTION 37. *Be it further enacted*, That there is hereby appropriated the following amounts for the Tennessee State Library and Archives:

	1959-60	1960-61
1. Central Office	$250,000.00	$250,000.00
2. Public Libraries	25,000.00	25,000.00
3. Regional Libraries	300,000.00	300,000.00
4. Office of State Historian	30,000.00	12,500.00
5. Historical Commission	48,115.00	48,115.00
Total Library and Archives	$653,115.00	$635,615.00

EDUCATIONAL GRANTS-IN-AID

SECTION 38. *Be it further enacted*, That there is hereby appropriated for Educational Grants-in-Aid and for the National Employment Physically Handicapped for the fiscal year beginning July 1, 1959, Forty-one Thousand, Seventy-two ($41,072.00) Dollars; and for the fiscal year beginning July 1, 1960, and for each fiscal year thereafter Forty-one Thousand, Seventy-two ($41,072.00) Dollars, such appropriations to be expended under allotment of the State Budget Director to the following purposes: (a) Tennessee Academy of Science, (b) Scholarships, (c) Blind Girls Home, (d) National Employment Physically Handicapped, (e) State Aid to Youth, Inc., and (f) Spencer T. Hunt Trust Fund.

SECTION 39. *Be it further enacted*, That in the event revenues for the fiscal year ending June 30, 1959 from the tobacco tax and the sales and use tax exceed the total of One Hundred Nine Million ($109,000,000.00) Dollars, and [fol. 266] for the fiscal year ending June 30, 1960, the total of One Hundred Eleven Million, Two Hundred Thousand ($111,200,000.00) Dollars, as certified by the Comptroller of the Treasury; then that part of such excess as is earmarked for educational purposes, i.e., 96% of the tobacco tax, 80% of the two-thirds (2/3) of the sales and use tax, and 98½% of one-third (1/3) of the sales and use tax,

shall be made available in the subsequent fiscal year for the public school program, grades one through twelve, and for the state-supported special schools, colleges, and universities.

Such funds shall be distributed for the public school program, grades one through twelve, special State schools, and higher education on the percentage basis derived from the cost of such programs as set forth in the 1959-61 budget document of the State of Tennessee, this basis being for the year 1959-60, the sum of Eighty-four Million, Three Hundred Thousand ($84,300,000.00) Dollars for the minimum school program, grades one through twelve; One Million, Five Hundred Seventeen Thousand ($1,517,000.00) Dollars for special State schools; and Sixteen Million, Four Hundred Seventy Thousand ($16,470,000.00) Dollars for higher education, or a total of One Hundred Two Million, Two Hundred Eighty-seven Thousand ($102,287,000.00) Dollars, and the respective percentages shall be 82.42% for the public school program, grades one through twelve, 1.48% for special State schools, and 16.10% for higher education for the year 1959-60; and this basis being for the year 1960-61 the sum of Eighty-nine Million, Eight Hundred Thousand ($89,800,000.00) Dollars for the minimum school program; One Million, Five Hundred Sixty-seven Thousand ($1,567,000.00) Dollars for special State schools; and for higher education Seventeen Million, Five Hundred Thousand ($17,500,000.00) Dollars, or a total of [fol. 267] One Hundred Eight Million, Eight Hundred Sixty-seven Thousand ($108,867,000.00) Dollars; and the respective percentages shall be 82.49% for the public school program, grades one through twelve, 1.44% for special State schools, and 16.07% for higher education.

Any funds distributed under the provisions of this section to county, city, and special school districts shall be used by the respective boards of education exclusively to supplement teachers' salaries, provided that the Legislature may by local or private act divert such funds to other educational purposes, and provided further that in computing future salary increases, such sums as may be paid hereunder or such supplements shall not be treated as a part of the salary on which such increase shall be computed.

The funds allocated to county, city, and special school districts under the provisions of this section shall be distributed for the year 1959-60 on the basis of the average daily attendance of the year 1958-59, and shall be distributed for the year 1960-61 on the basis of the average daily attendance for the year 1959-60.

Any funds which may become available to state-supported special schools, colleges and universities under the provisions of this section may be used by the respective board of education or trustees for teachers' salaries, current operating expenses and for capital outlay, as may be determined by the said respective board.

Any county, city, and special school district board of education shall be and is hereby authorized and empowered, notwithstanding the provisions of any other law of this [fol. 268] state or any provisions of the contracts which the said board of education has executed with its employees, to increase the salaries of its employees after the beginning of or at any time during any school year, provided that in so doing it shall not exceed its budget as properly adopted or amended.

It is expressly provided that the funds distributed to counties, cities, and special school districts under the provisions of this section shall not be construed as local funds for meeting any local requirements of this Act; neither shall the amount of any salary increases which may be allowed to any teacher, principal, and superintendent, by reason of state funds distributed under the provisions of this section be construed to be an addition to the State salary schedule from local funds.

Such funds as may become available under this provision shall be certified by the State Comptroller of the Treasury on or about July 15, 1959 and July 15, 1960, respectively.

OTHER PROVISIONS

SECTION 40. *Be it further enacted*, That any amount of the appropriations made in Section 2, Section 14, and Section 15 of this Act for the first year of the biennium 1959-61, which shall be unexpended and unobligated at the close of business on June 30, 1960, shall be placed in a reserve

account in the general fund of the State; provided that as any of such amounts in said reserve account in the general fund of the State may be needed within the second year of the biennium, for the purposes for which said funds were originally appropriated, the State Director of the Budget, [fol. 269] with the approval of the Governor, may make such allotments out of such reserve account in the general fund which, when made, shall be added to the allotments made out of the respective appropriations for such purposes for the second year of the biennium 1959-61.

All appropriations made in this Act, notwithstanding any other provision hereof, are subject to the provisions of Chapter 33, Public Acts of 1937, as amended, as codified in Sections 9-601 through 9-612 of the Tennessee Code Annotated.

SECTION 41. *Be it further enacted*, That it is not the intention of the Legislature in enacting this Act to repeal by implication or to supersede or suspend any provision of Title 49 of Tennessee Code Annotated, or any other public law of this State as contained in Tennessee Code Annotated, except in cases of irreconcilable conflict. It is the legislative intention, hereby expressly declared, that all public laws of Tennessee dealing with the subject of education shall continue in full force and effect, except those statutes which are in irreconcilable conflict with the provisions of this Act.

SECTION 42. *Be it further enacted*, That effective July 1, 1959, Chapter 53, Public Acts of 1957, the caption of which is set forth in the caption hereof, and all other laws or parts of laws in conflict with the provisions of this Act, be and the same are hereby repealed.

SECTION 43. *Be it further enacted*, That the provisions of this Act are hereby declared to be severable. If any of its sections, provisions, exceptions, sentences, clauses, phrases, or parts be held unconstitutional or void, the remainder of this Act shall continue in full force and effect, [fol. 270] it being the legislative intent now hereby declared that this Act would have been adopted even if such unconstitutional or void matter had not been included therein.

SECTION 44. *Be it further enacted*, That this Act shall take effect from and after July 1, 1959, except that Section 17 shall become effective from and after the date of the passage of this Act, the public welfare requiring it.

Passed: February 5, 1959.

JAMES L. BOMAR,
Speaker of the House of Representatives.

WM. D. BAIRD,
Speaker of the Senate.

Approved: February 13, 1959.

BUFORD ELLINGTON,
Governor.

[fol. 271] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

REFERENCES BY SOLICITOR GENERAL OF TENNESSEE TO ENTRIES IN SENATE AND HOUSE JOURNALS OF THE GENERAL ASSEMBLY OF TENNESSEE, RE: TAXES—Filed November 23, 1959

May It Please The Court:

The complainants allege, in effect, that unfair, discriminatory allocation of taxes has been brought about by non-apportionment. In essence, the complaint is that the rights of the more populous under-represented counties have been defeated by the combined action of the representatives of the less populous over-represented counties. The Senate and House Journals of the Tennessee General Assembly do not sustain this allegation.

The intervening complaint singles out Section 54-611, a portion of the Rural Roads Act, Chapter 46, Acts of 1955,

as illustrative of the allegation. This act was introduced in the General Assembly as House Bill No. 264. It was passed by the Senate by a vote of twenty-eight ayes and no noes. See Senate Journal, 79th General Assembly, 1955, [fol. 272] p. 452.

The act was passed by the House by a vote of eighty-one ayes, eleven noes. The eleven no votes were all by representatives from rural counties. See House Journal, 79th General Assembly, 1955, p. 466.

Another law singled out for particular criticism is the General Education Law, Chapter 14, Acts of 1959. This act was House Bill No. 123, and was passed by the Senate by a vote of thirty-three ayes, no noes. See Senate Journal, 81st General Assembly 1959, p. 350. (Since this journal has not been published, the certificate of John W. Cooke, Jr., Chief Clerk of the Senate, showing the foregoing, has been filed).

House Bill No. 123 passed the House by a vote of ninety-one ayes and six noes. Four of the representatives voting no were from rural counties. See certificate of L. Buchanan Loser, Chief Clerk of the House of Representatives of the 81st General Assembly, filed in this case.

The County Aid Fund law has been singled out for criticism. This law was Chapter 45, Public Acts of 1931. It was introduced in the Senate as Senate Bill No. 419. The published Senate Journal index contains no reference from which it can be ascertained by what vote it passed the Senate.

The bill passed the House by a vote of seventy-two ayes, twenty-one noes. Seven of the twenty-one noes were from [fol. 273] rural counties. See House Journal, 67th General Assembly, 1931, p. 1495.

Respectfully submitted,

Allison B. Humphreys, Solicitor General, 401 Seventh Avenue North, Nashville 3, Tennessee.

[fol. 274]

ATTACHMENT TO REFERENCES

SENATE CHAMBER
STATE OF TENNESSEE
NASHVILLE

JOHN W. COOKE, JR.
CHIEF CLERK
2321 SWEETWOOD ROAD
NASHVILLE, TENNESSEE

August 25, 1959

General Allison Humphreys
Supreme Court Building
Nashville, Tennessee

Dear General Humphreys:

I hereby certify that listed below is the third and final vote on House Bill No. 123 as recorded on page 350 of the 1959 Senate Journal.

"Thereupon, House Bill No. 123 passed its third and final reading by the following vote:

Ayes	33
Noes	0

Senators voting aye were: Messrs. Blackwell, Bockman, Boyers, Cash, Cobb, Coulter, Dement, Dennis, Doggett, Eblen, Fulton, Glover, Guffey, Haynes, Hughes, Hunt, Kelley, Knippers, Larkin, McGrath, McLemore, Mitchell (of Overton), Mitchell (of Shelby), Moore, Murray, Oakes, O'Brien, Padgett, Peters, Robinson, Sipes, Wilder and Mr. Speaker Baird—33.

A motion to reconsider was tabled."

Hoping that this is the desired information, I am

Sincerely yours,

/s/ JOHN W. COOKE, JR.

John W. Cooke, Jr.
Chief Clerk

JWCJr/ss

[fol. 275]

ATTACHMENT TO REFERENCES

WEDNESDAY, FEBRUARY 4, 1959
Thirty-first Day

House Bill No. 123—To Provide for operation, State Educational System.

The bill passed its third and final reading by the following vote:

AYES	91
NOES	6

Representatives voting aye were: Messrs. Adcock, Adcox, Aderhold, Akin, Allen, Atkin, Atkinson, Bagley, Bailey, Baird, Bales, Barry, Beard, Bell, Bertucci, Binkley, Brown (of Shelby), Bunn, Byrd, Caldwell, Carson, Chisolm, Clark, Crockarell, Cox (of Henry), Cox (of Washington), Cummings (of Cannon), Cummings (of Gibson), Damron, Davis (of Knox), Davis (of Rhea), Davis (of Hardeman), Doyle, Dunbar, Durham, Dyer, Evans, Fancher, Flippin, Givens, Gracey, Graham, Hamilton, Hanover, Hollingsworth, Jones, Kelley, Lambert, Lanier (of Dyer), Lanier (of Haywood), Lockert, McCammon, McCawley, McIlwain, Maddox, Mathis, Matthews, Moles, Morgan, Moriarty, Morton, Motlow, Murley, Nease, Parker, Patten, Peeler, Pellagrin, Pipkin, Pope, Price, Prince, Quillen, Rann, Rhinehart, Richardson, Roark, Senter, Sims, Smith (of Franklin), Smith (of Montgomery), Stiner, Taylor, Van Hersh, Walker, Wallace (of Madison), Wallace (of Marshall), Westbrooks, Wolfenbarger, Woodard and Mr. Speaker Bomar—91.

Representatives voting no were: Messrs. Bowers, Brown (of Knox), Crouch, Gammon, MacArthur and Oakley—6.

A motion to reconsider was tabled.

[fol. 276] CERTIFICATE

I, L. Buchanan Loser, Chief Clerk of the House of Representatives of the Eighty-first General Assembly of the State of Tennessee, do hereby certify that the foregoing is a full, true and correct copy of the roll call of the House of

Representatives of the Eighty-first General Assembly insofar as it pertains to the recording of the vote on third and final reading on House Bill No. 123—To Provide For Operation, State Educational System.

This, the 26th day of August, 1959.

Buchanan Loser, Chief Clerk, House of Representatives, Eighty-first General Assembly, State of Tennessee.

[fol. 277] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

MOTION TO AMEND AND SUPPLEMENT INTERVENING PETITION OF BEN WEST, MAYOR, CITY OF NASHVILLE, TENNESSEE—Filed December 2, 1959

Comes the intervening plaintiff, Ben West, Mayor of the City of Nashville, Tennessee, and respectfully moves the Court for the entry of an order permitting him to amend and supplement the intervening petition heretofore filed by him, by the filing as a part thereof the amendment and supplement to his petition hereto attached.

Robert H. Jennings, Jr., City Attorney for the City of Nashville.

Harris Gilbert, Denney, Leftwich & Osborn

[fol. 278] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 279] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

CHARLES BAKER et al., Plaintiffs,

v.

JOE C. CARR et al., Defendants.

PER CURIAM OPINION—December 21, 1959

Before: Martin, Circuit Judge, and Boyd and Miller, District Judges.

Per Curiam. The original plaintiffs and intervening plaintiffs, citizens and qualified voters residing in different areas of Tennessee, seek to challenge in this action under the equal protection and due process clauses of the Fourteenth Amendment the existing legislative apportionment in Tennessee. Briefly summarized, the contentions of the plaintiffs[1] are as follows:

[fol. 280] The Constitution of Tennessee (Article 2, Sections 4, 5 and 6) directs the legislature at the expiration of each 10-year period after 1871 to make an enumeration of the qualified voters and to apportion the members of the legislature among the several counties or districts according to the number of qualified voters therein. It provides for 99 members of the House of Representatives and 33 members of the Senate. Despite the mandatory requirements of the state constitution, no reapportionment has been enacted by the legislature since the Act of 1901, and even that Act was passed without the enumeration of voters required by the Constitution of the State. Although persistent demands have been made upon the legislature to

[1] In this opinion the term "plaintiffs" will include both the original plaintiffs and the intervening plaintiffs. After the original complaint was filed other parties were allowed to intervene as plaintiffs, including the Mayor of the City of Nashville.

reapportion the state for legislative purposes in accordance with the constitutional command, and although numerous bills have been introduced in the legislature to accomplish this purpose, the distribution of legislative seats remains as provided for in the Act of 1901. Such legislative distribution is grossly disproportionate to the distribution of population in the state, a condition brought about by shifts or changes in population since 1901. The inevitable result of this violation of the constitutional mandate is a gross inequality of legislative representation, a debasement of the voting rights of large numbers of citizens, and hence a denial of the equal protection of the law guaranteed by the Fourteenth Amendment. Illustrating the inequality, it is pointed out that a minority of approximately 37 per cent [fol. 281] of the voting population of the state now controls 20 of the 33 members of the Senate. It is further alleged that such inequality of representation has resulted in continuous and systematic legislative discrimination against the plaintiffs and others similarly situated with respect to the allocation of the burdens of taxation and the distribution of funds derived from the state through the exercise of the taxing power, notably funds for the support of the public schools, the maintenance of roads and highways and other purposes.

Named as defendants in the action are the Secretary of State, the Attorney General, the Co-Ordinator of Elections, and the Members of the State Board of Elections. No remedy is sought by the plaintiffs which would contemplate direct action against the state legislature or its members to require them to reapportion the legislative districts. Specifically, the plaintiffs request that the Court declare unconstitutional the legislative Reapportionment Act of 1901 as well as the Code provisions of Tennessee implementing that Act as being violative of the equal protection and due process clauses of the Fourteenth Amendment, and that the Court then either (a) require by injunction that the defendants take necessary steps to hold an election by means of which the members of the next legislature would be elected from the state at large without regard to counties [fol. 282] or districts, or (b) direct the defendants to hold an election by means of which the members of the legisla-

ture would be elected from counties and districts in accordance with the constitutional formula by applying mathematically the federal census of 1950.

The action is presently before the Court upon the defendants' motion to dismiss predicated upon three grounds: first, that the Court lacks jurisdiction of the subject matter; second, that the complaints fail to state a claim upon which relief can be granted; and third, that indispensable party defendants are not before the Court.

The question of the distribution of political strength for legislative purposes has been before the Supreme Court of the United States on numerous occasions. From a review of these decisions there can be no doubt that the federal rule, as enunciated and applied by the Supreme Court, is that the federal courts, whether from a lack of jurisdiction or from the inappropriateness of the subject matter for judicial consideration, will not intervene in cases of this type to compel legislative reapportionment. Colegrove v. Green, 328 U. S. 549; Cook v. Fortson and Turman et al. v. Duckworth, 329 U. S. 675; Colegrove v. Barrett, 330 U. S. 804; McDougal et al. v. Green, 335 U. S. 281; South et al. v. Peters, 339 U. S. 276; Remmey v. Smith, 342 U. S. 916; [fol. 283] Anderson v. Jordan, 343 U. S. 912; Kidd v. McCanless et al., 352 U. S. 920; Radford v. Gary, 352 U. S. 991.

In view of this array of decisions by our highest court, charting the unmistakable course which this Court must pursue in the instant case, it is unnecessary to consider decisions by lower federal courts. It is significant to point out that the case of Kidd v. McCanless, supra, involved the identical apportionment statutes and the identical state of facts with respect to apportionment of representatives in Tennessee, as the present action, the appeal in that case by the plaintiffs from the adverse decision of the Supreme Court of Tennessee being dismissed by the Supreme Court of the United States upon the authority of Colegrove v. Green, supra, and Anderson v. Jordan, supra. Moreover, the facts in the recent case of Radford v. Gary, supra, decided February 25, 1957, are substantially parallel to the facts of the present case. The plaintiffs attacked the existing legislative apportionment in Oklahoma, alleging inequalities in legislative representation and a consequent

violation of the equal protection clause of the Fourteenth Amendment. The relief sought was not only a mandatory injunction against the members of the legislature, but in the alternative that the members of the legislature be elected at large until constitutional reapportionment could be effected. A three-judge federal district court dismissed the action (Radford v. Gary, 145 F. Supp. 541) and the Supreme Court of the United States affirmed the judgment [fol. 284] of the district court by a per curiam opinion upon the authority of Colegrove v. Green, supra, and Kidd v. McCanless, supra. The Court can find no way in the present case to escape the compelling authority of this ruling as well as the other rulings of the Supreme Court herein cited.[2]

The wisdom and soundness of the non-intervention rule consistently followed by the Supreme Court are strikingly pointed up when the question of an appropriate judicial remedy is considered. As stated, the plaintiffs do not even insist that the Court could or should take any direct action against the legislature itself, by mandamus or otherwise, to compel the individual members of the legislature to perform their constitutional duties to reapportion the state legislative seats. The suggested remedies are indirect in character. Kidd v. McCanless, 200 Tenn. 273, affirmed by the Supreme Court of the United States in Kidd v. McCanless, supra, holds that a declaration of unconstitutionality of the existing apportionment statute of Tennessee, without more, would result in a destruction of the state government [fol. 285] itself, since the de facto doctrine would not be applicable to maintain the present members of the legislature in office and there would be no prior valid apportionment act to fall back upon. In view of this decision, the plaintiffs recognize that the Court, if it declared the existing apportionment statute unconstitutional, would be required to go further and devise an appropriate remedy so as to avoid a disruption of state government. However, the

[2] The duty of the court to refuse intervention is not changed by allegations to the effect that various tax proceeds are allocated upon a discriminatory basis. Even if such general allegations could be accepted as showing specific results of existing legislative apportionment, they do not change the essential character of the controversy or the fundamental bases of the Supreme Court rulings refusing intervention.

remedies suggested by the plaintiffs are neither feasible nor legally possible.

The alternative of an election at large is met with a number of insuperable objections. First, the Constitution of Tennessee specifically provides for the election of members of the legislature from counties and districts, and no provision whatever is made for a legislature composed of members elected at large.[3] It is true that the Constitution provides that the legislature of the state is "dependent upon the people" but the power to direct an election at large cannot be inferred from such general language in the face of specific provisions for election from districts. Practical considerations also are heavily weighted against such a remedy. It would lead to serious geographical inequalities [fol. 286] and other discriminations, probably to a greater extent than those presently existing. It would require the Court not only to provide for the supervision of the entire election but also to devise detailed rules and regulations under which such election should be held, a task which the courts are not equipped to undertake. Furthermore, even if a legislature should be constituted as the result of an election at large, the Court would have no control over it and would have no means of compelling such a legislature to redistrict the state in accordance with the constitutional mandate. An election at large, directed by the Court, would indeed inject the Court into a "political thicket", as stated in Colegrove v. Green, supra.

Equally objectionable would be an election held on the basis of an enumeration of voters in the various counties and districts of the state determined by the Court by applying the last federal census. The Constitution of the state vests the duty of making the enumeration in the legislature and not in the courts. Moreover, the redistricting of the state is required to be based upon an enumeration of the qualified voters and not upon population alone. The Court would have no way of knowing the number of qualified voters in the various districts. Such a remedy would con-

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[3] Smiley v. Holm, 285 U. S. 355, and Koenig v. Flynn, 285 U. S. 375, relied on by plaintiffs for ordering an election at large, both dealt with the election of congressional representatives under a federal act providing for the election of representatives at large under certain conditions, and these cases are not in point here.

stitute the clearest kind of judicial legislation and an unwarranted intrusion into the political affairs of the state. [fol. 287] It is strenuously argued by the plaintiffs that the case alleged in the complaint is one involving a clear violation of their individual rights guaranteed by the Fourteenth Amendment, and for this reason that the Court should in some way overcome its reluctance to intervene in matters of a local political nature and formulate a remedy which would adequately protect their rights. It is insisted that the wrong committed against them by the failure and refusal of the state legislature to abide by the state constitution is clear and unmistakable and that the courts should not leave such wrong without a remedy. With the plaintiffs' argument that the legislature of Tennessee is guilty of a clear violation of the state constitution and of the rights of the plaintiffs the Court entirely agrees. It also agrees that the evil is a serious one which should be corrected without further delay. But even so the remedy in this situation clearly does not lie with the courts. It has long been recognized and is accepted doctrine that there are indeed some rights guaranteed by the Constitution for the violation of which the courts cannot give redress. Some examples of such rights not appropriate for judicial relief were set forth by Mr. Justice Frankfurter in his opinion in Colegrove v. Green, supra:

> "The Constitution has many commands that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action. Thus, 'on Demand of the executive Authority,' [fol. 288] Art. IV, Sec. 2, of a State it is the duty of a sister State to deliver up a fugitive from justice. But the fulfilment of this duty cannot be judicially enforced. *Kentucky* v. *Dennison*, 24 How. 66. The duty to see to it that the laws are faithfully executed cannot be brought under legal compulsion, *Mississippi* v. *Johnson*, 4 Wall. 475. Violation of the great guaranty of a republican form of government in States cannot be challenged in the courts. *Pacific Telephone Co.* v. *Oregon*, 223 U. S. 118. The Constitution has left the performance of many duties in our governmental scheme to

depend on the fidelity of the executive and legislative action and, ultimately, on the vigilance of the people in exercising their political rights." (p. 556)

Being of the opinion that the Court has no right to intervene or to grant the relief prayed for, it is unnecessary to discuss the further ground of the motion that the action must fail because of the non-joinder of indispensable parties as defendants.

An order will be submitted dismissing the action in accordance with this opinion.

John D. Martin, United States Circuit Judge; Marion S. Boyd, William E. Miller, United States District Judges.

[fol. 289] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

CHARLES BAKER, et al., Plaintiffs,

vs.

JOE C. CARR, et al., Defendants.

ORDER DISMISSING COMPLAINT—February 4, 1960

This cause was heard on the original complaint, the intervening petitions and the amended intervening petition of Ben West, Mayor of the City of Nashville, in accordance with the per curiam opinion heretofore filed; in conformity with said per curiam opinion the first two grounds of defendants' motion to dismiss (1) that the Court lacks jurisdiction of the subject matter, and (2) that the complaint fails to state a claim upon which relief can be granted, are

sustained, defendants' motion to dismiss is granted, and the complaint is hereby dismissed.

Enter, this 4 day of February, 1960.

John D. Martin, United States Circuit Judge; Marion S. Boyd, William E. Miller, United States District Judges.

Approved for Entry:

Denney, Leftwich & Osborn, For all Plaintiffs and Intervenors.

[fol. 290]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

ORDER ALLOWING CITY OF KNOXVILLE AND CITY OF CHATTANOOGA TO INTERVENE AS PARTIES PLAINTIFF; ALSO ALLOWING CITY OF NASHVILLE TO AMEND AND SUPPLEMENT PETITION, ETC.—March 22, 1960

This case came on further to be heard at the direction of the Honorable William E. Miller, District Judge for the Middle District of Tennessee, on this 26th day of February, 1960, it having theretofore appeared to the Court that no Orders had been entered respecting the Motion of Ben West, Mayor of the City of Nashville, for leave to amend and supplement his intervening petition, which amended and supplemental intervening petition had been lodged with the Clerk and by the Clerk distributed to the District Judges assembled for the hearing of the cause, and further that no Order had been entered with respect to the Petitions filed by the City of Knoxville, Tennessee and the City of Chattanooga, Tennessee, for leave to intervene as parties plain-
[fol. 291] tiff. Whereupon, the Court heard argument of counsel and particularly the objections of the attorneys for the defendants to the entry of any Order whereby said

amended and supplemental intervening petition of the said Ben West or the petitions for permission to intervene of said cities might be made a part of the record in this cause, first that as a matter of law, any action with respect to said amended and supplemental intervening petition and said petitions to intervene as plaintiffs came too late, and second, that the things and matters pleaded in said amended and supplemental petition were immaterial. And it appearing to the three-judge District Court assembled for the hearing of the original and intervening plaintiffs, that the objections made by the defendants are not well taken and should be overruled and that the original and intervening parties plaintiff are entitled to have, as a part of the record herein, said amended and supplemental petition and an Order reflecting the allowance of the petition of said cities to intervene as parties plaintiff, it is,

Ordered, Adjudged and Decreed that Ben West, Mayor of Nashville, intervening plaintiff, be and he is hereby permitted to file and make a part of the record herein, that amended and supplemental petition heretofore filed and exhibited to his Motion for leave to amend and supplement his petition, and it is further ordered that the City of Knoxville, Tennessee, and the City of Chattanooga, Tennessee, be and they are hereby made and constituted parties plaintiff in this cause. It is further ordered that the Motion to [fol. 292] Dismiss heretofore filed on behalf of the defendants, be and the same is hereby permitted to stand as a motion to dismiss to the said amended and supplemental petition and the petitions to intervene on behalf of said cities and, it appearing to the Court that the additional matters pleaded and the rights of the additional parties hereby allowed are sufficiently treated in that per curiam opinion filed by this Court on December 21, 1959, and that further hearing of the plaintiffs is in no wise warranted by the action herein taken, it is further Ordered, Adjudged and Decreed that the plaintiff's cause be and the same is hereby dismissed, all as heretofore provided in an Order of Dismissal entered in this cause on February 4, 1960.

Enter, this 22nd day of March, 1960.

John D. Martin, United States Circuit Judge; Marion S. Boyd, William E. Miller, United States District Judges.

O. K. for Entry:

Denney, Leftwich & Osborn, Attorneys for Plaintiff.
George F. McCanless, Attorney General, for the defendants.

[fol. 293] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

AMENDMENT AND SUPPLEMENT TO THE INTERVENING PETITION FILED BY THE PLAINTIFF, BEN WEST, MAYOR, CITY OF NASHVILLE, TENNESSEE—Filed March 22, 1960

Leave of Court first having been obtained, Ben West, Mayor, City of Nashville, Tennessee, on behalf of himself individually and on behalf of the residents of Nashville, Davidson County, Tennessee, and said City, herewith amends and supplements his intervening petition in the following particulars:

I.

By adding to the VIII Section of said intervening petition, wherein the relief prayed and described is set forth, the following:

"Title 28, Section 2201, United States Code Annotated, reads as follows:

"'*Creation of remedy.* In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon [fol. 294] the filing of an appropriate pleading, may

declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.'

"For the fact that the Apportionment Act of 1901, Sections 3-101 to 3-109, of the Tennessee Code Annotated, in effect repealed or nullified Sections 4, 5 and 6 of Article 2 of the Constitution of Tennessee providing for apportionment of representatives and senators among the qualified voters of Tennessee, and, for the fact that those thirty General Assemblies elected pursuant to said Apportionment Act of 1901 have consistently rejected all Acts and Bills providing for an apportionment of membership in the General Assembly in accordance with said Sections of the Constitution of Tennessee systematically enforcing upon the plaintiff and those similarly situated the provisions of said Apportionment Act of 1901, and in effect working a repeal of that constitutional provision requiring an apportionment of seats in the General Assembly within every term of ten years, whereby the plaintiffs and those similarly situated are deprived of the equal protection of the laws and of the right to free and equal suffrage as guaranteed by the United States Constitution, the plaintiff is entitled to a declaration of his rights and other legal relations to the defendants, and particularly whether said Apportionment Act of 1901 is constitutional 'whether or not further relief is or could be sought.' "

[fol. 295] II.

And the intervening plaintiff supplements and amends Section XXII of his intervening petition by adding the following paragraph:

"The direct relationship between excess representation in the unlawfully constituted General Assembly of Tennessee and the obtaining of an excess share in the monies collected by the State of Tennessee in the exercise of its power to tax, and the converse, the direct

relationship between the lack of proportionate representation in the General Assembly and the bearing of an excessive and disproportionate share of the expense of Government is demonstrated by certain statistical material prepared at the direction of the intervening plaintiff by the Advanced Planning Division of the Planning Commission of the City of Nashville herewith exhibited. Exhibit No. 4 attached hereto and made a part hereof (Exhibit No. 2 filed to the intervening petition consisted of an exhaustive history of the systematic refusal of the General Assembly to reapportion representation in the General Assembly) lists those Counties given an excess of direct representation in the Tennessee House of Representatives by the Apportionment Act of 1901, as reflected by the Twelfth Census of the United States taken in the year 1900; it lists those Counties having and given excess representation as reflected by the Thirteenth Census of the United [fol. 296] States, taken in the year 1910, and those Counties having excess representation under said Act, as reflected by the Census of the United States population taken in 1950. As shown by said Exhibit, population changes and certain amendments to the Act of 1901 by the year 1950 found twenty-three Counties possessed of twenty-five direct representatives, when their voting population would have entitled them to but two direct representatives. Exhibit No. 5 herewith attached and made a part hereof, lists those Counties having a deficiency of direct representatives according to the number of their qualified voters, as reflected by those same Census reports, for the years 1900, 1910 and 1950. As of the year 1950, those ten Counties, including the County of Davidson in which your intervening petitioner resides, although entitled to forty-five direct representatives under the constitutional formula, actually had but twenty direct representatives. Exhibit No. 6 tabulates the amendments made to the Apportionment Act of 1901 in the intervening fifty-eight years, reflecting the further disrespect of the Legislature for the constitutional formula. Exhibit No. 7 attached hereto reflects the disparity in voting population in the sena-

torial districts established by the Act of 1901, and its unconstitutionality when enacted and as applied to the voting population of Tennessee, as reflected by the Census of 1950. Exhibit No. 8 attached hereto shows [fol. 297] the treatment of the educational funds of the State of Tennessee by that unlawfully constituted General Assembly. Those twenty-three Counties listed in Exhibit No. 4, and shown to have twenty-three direct representatives to which, by the constitutional formula, said Counties are not entitled, receive the sum $152.25 per pupil on the basis of the average daily attendance in their schools, whereas those ten Counties having twenty direct representatives, but entitled to twenty-five additional direct representatives according to the constitutional formula, receive but $107.52 per pupil, based on the average daily attendance of pupils in their school sytems. The average for all pupils in the State is $129.90; on this basis, those twenty-three overrepresented Counties receive 17.21% more State aid than the formula would allow, and those ten underrepresented Counties collectively receive 20.81% less than the formula would allow for them. Exhibit No. 9 attached hereto and made a part hereof reflects of the treatment of the citizens of Tennessee by that unlawfully constituted General Assembly in the division of the State Gasoline and Motor Fuel Tax monies among the Counties of the State. This Exhibit again compares the effect of over-representation in the Legislature, and the effect of under-representation in the State Legislature, showing that those twenty-three Counties [fol. 298] having twenty-three more direct representatives than the constitutional formula entitles them to, receive per motor vehicle registered the average sum $28.98, whereas those ten Counties lacking twenty-five direct representatives to which the constitutional formula would entitle them, receive but $6.10 per motor vehicle registered in their Counties. Distribution of this fund is also reflected on the basis of population of said over-represented and said under-represented Counties; on that basis said over-represented Counties receive $9.19 per capita from the funds stated, while

the under-represented Counties receive but $2.46 per capita from the fund, while the average for all Counties in the State is $5.82 per capita. Exhibit No. 10 shows in map form the apportionment of seats in the House of Representatives under said Act of 1901, as of that year; Exhibit No. 11 shows the apportionment of seats in the House of Representatives as of the year 1951 under said Act as amended. Exhibit No. 12 shows the apportionment of seats in the Senate of Tennessee in map form."

III.

Wherefore, the intervening plaintiff prays for relief as set forth in his intervening complaint.

Ben West, Mayor of Nashville.

Robert H. Jennings, Jr., City Attorney for the City of Nashville; Harris Gilbert, Denney, Leftwich & Osborn, Special Counsel to City Attorney.

[fol. 299]

EXHIBIT 4 TO AMENDMENT

(See opposite)☞

[fol. 299]

Exhibit 4 to Amendment

COUNTIES HAVING AN EXCESS OF DIRECT REPRESENTATIVES ACCORDING TO 1900 VOTING POPULATION* AND TENNESSEE STATE CONSTITUTION, ARTICLE II, SECTION 5 - 1901 TENNESSEE GENERAL ASSEMBLY

COUNTY	1900 VOTING POPULATION*	RATIO	NUMBER OF DIRECT REPRESENTATIVES BY FORMULA**	ACTUAL NUMBER OF DIRECT REPRESENTATIVES
Cannon	2,781	.5649	0	1
Gibson	9,466	1.9288	1	2
Jackson	3,178	.6455	0	1
Madison	8,756	1.7786	1	2
Overton	2,925	.5941	0	1
White	3,118	.6333	0	1
		TOTAL	2	7

$$\text{Ratio} = \frac{\text{County Voting Population} \times 99}{\text{Total Tennessee Voting Population}}$$

Total Tennessee Voting Population in 1900 was 487,380.*

* 12th Census of the United States, Taken in the Year 1900, Population, Part II, Table 26, pp. 202 - 203.

** Formula according to Art. II, Sec. 5, Tenn. State Constitution.

[fol. 300]

COUNTIES HAVING AN EXCESS OF DIRECT REPRESENTATIVES ACCORDING TO 1910 VOTING POPULATION* AND TENNESSEE STATE CONSTITUTION, ARTICLE II, SECTION 5 - 1911 TENNESSEE GENERAL ASSEMBLY

COUNTY	1910 VOTING POPULATION*	RATIO	NUMBER OF DIRECT REPRESENTATIVES BY FORMULA**	ACTUAL NUMBER OF DIRECT REPRESENTATIVES
Cannon	2,634	.4718	0	1
DeKalb	3,642	.6524	0	1
Gibson	10,385	1.8603	1	2
Jackson	3,282	.5879	0	1
Madison	10,024	1.7956	1	2
Maury	10,703	1.9172	1	2
Overton	3,654	.6542	0	1
Stewart	3,448	.6176	0	1
White	3,629	.6501	0	1
		TOTAL	3	12

$$\text{Ratio} = \frac{\text{County Voting Population} \times 99}{\text{Total Tennessee Voting Population}}$$

Total Tennessee Voting Population in 1910 was 552,668.*

* 13th Census of the United States, Taken in the Year 1910, Population, Vol. III, Tennessee, Table I, pp. 745 - 761.

** Formula according to Art. II, Sec. 5, Tenn. State Constitution.

[fol. 301]

COUNTIES HAVING AN EXCESS OF DIRECT REPRESENTATIVES ACCORDING TO 1950 VOTING POPULATION* AND TENNESSEE STATE CONSTITUTION, ARTICLE II, SECTION 5 - 1951 TENNESSEE GENERAL ASSEMBLY

COUNTY	1950 VOTING POPULATION*	RATIO	NUMBER OF DIRECT REPRESENTATIVES BY FORMULA**	ACTUAL NUMBER OF DIRECT REPRESENTATIVES
Cannon	5,341	.2672	0	1
Chester	6,391	.3198	0	1
Claiborne	12,799	.6404	0	1
Cocke	12,572	.6291	0	1
Crockett	9,676	.4842	0	1
DeKalb	6,984	.3495	0	1
Dickson	11,294	.5651	0	1
Gibson	48,132	1.4927	1	2
Hardin	16,908	.4792	0	1
Hickman	7,598	.3802	0	1
Jackson	6,719	.3362	0	1
Lake	6,252	.3128	0	1
McNairy	11,601	.5805	0	1
Madison	37,245	1.8636	1	2
Marion	10,988	.5503	0	1
Marshall	11,288	.5648	0	1
Monroe	12,884	.6447	0	1
Moore	2,340	.1171	0	1
Overton	9,474	.4740	0	1
Sevier	12,793	.6401	0	1
Smith	8,731	.4369	0	1
Stewart	5,238	.2621	0	1
White	9,244	.4625	0	1
		TOTAL	2	25

Ratio = $\frac{\text{County Voting Population} \times 99}{\text{Total Tennessee Voting Population}}$

Total Tennessee Voting Population in 1950 was 1,978,548.*

* U. S. Census of Population: 1950. Vol. II, Characteristics of the Population, Part 42, Tennessee, Chapter B, Table 42, pp. 92 - 97

** Formula according to Art. II, Sec. 5, Tenn. State Constitution.

[fol. 302]

Exhibit 5 to Amendment

COUNTIES HAVING A DEFICIENCY OF DIRECT REPRESENTATIVES ACCORDING TO 1900 VOTING POPULATION* AND TENNESSEE STATE CONSTITUTION, ARTICLE II, SECTION 5 - 1901 TENNESSEE GENERAL ASSEMBLY

COUNTY	1900 VOTING POPULATION *	RATIO	NUMBER OF DIRECT REPRESENTATIVES BY FORMULA**	ACTUAL NUMBER OF DIRECT REPRESENTATIVES
Anderson	4,130	.8389	1	0
Bradley	3,687	.7489	1	0
Campbell	3,976	.8076	1	0
Carter	3,748	.7613	1	0
Grainger	3,576	.7264	1	0
Henry	4,050	.8227	1	0
Jefferson	4,134	.8389	1	0
Lawrence	3,730	.7577	1	0
Marion	4,066	.8259	1	0
Rhea	3,405	.6916	1	0
Shelby	43,843	8.9057	8	7
		TOTAL	18	7

$$\text{Ratio} = \frac{\text{County Voting Population} \times 99}{\text{Total Tennessee Voting Population}}$$

Total Tennessee Voting Population in 1900 was 487,380. *

* 12th Census of the United States, Taken in the Year 1900, Population, Part II, Table 26, pp. 202 - 203.

** Formula according to Art. II, Sec. 5, Tennessee State Constitution.

[fol. 303]

COUNTIES HAVING A DEFICIENCY OF DIRECT REPRESENTATIVES ACCORDING TO 1910 VOTING POPULATION* AND TENNESSEE STATE CONSTITUTION, ARTICLE II, SECTION 5 - 1901 TENNESSEE GENERAL ASSEMBLY

COUNTY	1910 VOTING POPULATION*	RATIO	NUMBER OF DIRECT REPRESENTATIVES BY FORMULA**	ACTUAL NUMBER OF DIRECT REPRESENTATIVES
Anderson	4,100	.7344	1	0
Bradley	3,845	.6888	1	0
Campbell	6,514	1.1669	1	0
Carter	4,438	.7950	1	0
Davidson	41,707	7.4710	7	6
Hamilton	25,381	4.5465	4	3
Jefferson	4,210	.7541	1	0
Knox	24,801	4.4426	4	3
Lawrence	4,219	.7558	1	0
Shelby	60,095	10.7649	10	7
		TOTAL	31	19

$$\text{Ratio} = \frac{\text{County Voting Population} \times 99}{\text{Total Tennessee Voting Population}}$$

Total Tennessee Voting Population in 1910 was 552,668.*

* 13th Census of the United States, Taken in the Year 1910, Population, Vol. III, Tennessee, Table I, pp. 745 - 761.

** Formula according to Art. II, Sec. 5, Tennessee State Constitution.

[fol. 304]

COUNTIES HAVING A DEFICIENCY OF DIRECT REPRESENTATIVES ACCORDING TO 1950 VOTING POPULATION* AND TENNESSEE STATE CONSTITUTION, ARTICLE II, SECTION 5 - 1951 TENNESSEE GENERAL ASSEMBLY

COUNTY	1950 VOTING POPULATION *	RATIO	NUMBER OF DIRECT REPRESENTATIVES BY FORMULA**	ACTUAL NUMBER OF DIRECT REPRESENTATIVES
Anderson	33,990	1.7007	1	0
Bradley	18,273	.9143	1	0
Campbell	17,477	.8745	1	0
Carter	23,303	1.1660	1	0
Davidson	211,930	10.6043	10	6
Hamblen	14,090	.7050	1	0
Hamilton	131,971	6.6034	6	3
Knox	140,559	7.0331	7	3
Shelby	312,345	15.6287	15	7
Sullivan	55,712	2.7876	2	1
		TOTAL	45	20

Ratio = $\frac{\text{County Voting Population} \times 99}{\text{Total Tennessee Voting Population}}$

Total Tennessee Voting Population in 1950 was 1,978,548. *

* U. S. Census of Population: 1950. Vol. II, Characteristics of the Population, Part 42, Tennessee, Chapter B, Table 42, pp. 92 - 97.

** Formula according to Art. II, Sec. 5, Tennessee State Constitution.

[fol. 305]

Exhibit 6 to Amendment

COUNTIES RECEIVING A DIRECT REPRESENTATIVE IN A TENNESSEE GENERAL ASSEMBLY MEETING BETWEEN 1901 AND 1959

COUNTY	YEAR RECEIVED DIRECT REPRESENTATIVE	VOTING POPULATION NEAREST PREVIOUS U. S. CENSUS	NEAREST PREVIOUS U. S. CENSUS	MINIMUM VOTING POPULATION REQUIRED FOR ONE DIRECT REPRESENTATIVE
Marion	1919	4,785	1910	3,722
Chester	1935	2,714	1930	2,589
Lake	1941	3,306	1940	1,900
Moore	1949	1,222	1940	1,900

* According to Art. II, Sec. 5 of the Tennessee State Constitution, for a county to receive a direct representative, such county must have a voting population equal to not less than two-thirds of the ratio arrived by dividing the total voting population of the state by ninety-nine representatives (99) in the House of the Tennessee General Assembly.

Sources:

Thirteenth Census of the United States Taken in The Year 1910, Population, Volume III, Tennessee, Table I, pp. [illegible]

Fifteenth Census of the United States: 1930, Population II, Ilotin, Second Series, Tennessee, Table 4, page [illegible] and Table 13, page 23

Sixteenth Census of the United States: 1940, Population, Second Series, Table 10, page [illegible] and Table 21, pages 42 and 43

Ratio — county voting population × 99 / total state voting population (nearest previous census)

Marion — $\frac{4,785 \times 99}{552,55}$ — 85/1

Chester — $\frac{2,714 \times 99}{1,418,144}$ — 1895

Lake — $\frac{3,306 \times 99}{1,707,760}$ — 1917

Moore — $\frac{1,222 \times 99}{1,707,760}$ — 0/08

[fol. 306]

Exhibit 7 to Amendment

TENNESSEE SENATORIAL DISTRICTS IN 1901 AND 1951, BY COUNTIES AND VOTING POPULATION IN 1900 AND 1950

SENATORIAL DISTRICT NUMBER	COUNTIES	TOTAL VOTING POPULATION 1900	VOTING POPULATION PER SENATOR 1900	TOTAL VOTING POPULATION 1950	VOTING POPULATION PER SENATOR 1950
1	Carter	3,748		23,303	
	Greene	6,967		23,649	
	Johnson	2,211		6,649	
	Unicoi	1,320		8,787	
	Washington	5,408		36,967	
			19,654		99,355
2	Hawkins	5,192		16,900	
	Sullivan	6,059		55,712	
			11,251		72,612
3	Campbell	3,976		17,477	
	Claiborne	4,559		12,799	
	Grainger	3,576		7,125	
	Hancock	2,274		4,710	
	Morgan	*		8,308	
	Scott	2,378		8,417	
	Union	2,841		4,600	
			19,604		63,436
4	Blount	4,359		30,353	
	Cocke	4,072		12,572	
	Hamblen	2,997		14,090	
	Jefferson	4,130		11,359	
	Sevier	4,434		12,793	
			19,992		81,167
5	Knox	19,049		140,559	
			14,130 **		102,726 **
6	Knox	19,049		140 559	
	Anderson	*		33 990	
	Loudon	2,467		13,264	
	Roane	*		17,639	
	Monroe	4,065		*	
	Polk	2,679		*	
			14,130 **		102,726 **
7	Anderson	4,130		*	
	Roane	5,470		*	
	Bradley	3,687		18,273	
	McMinn	4,278		18,347	
	James	1 281		*	
	Polk	*		7,330	
	Monroe	*		12,864	
			18,846		56,834
8	Hamilton	16,892		131,971	
			16,892		131,971

* County is in another district for the year indicated.

** In cases where a county has both a direct and floaterial senator, the sum of the voting population of all the counties in such floaterial district is divided by the number of direct and floaterial districts involved to determine the average population for each district.

[fol. 307]

TENNESSEE SENATORIAL DISTRICTS IN 1901 AND 1951, BY COUNTIES AND VOTING POPULATION IN 1900 AND 1950 (CONT.)

SENATORIAL DISTRICT NUMBER	COUNTIES	TOTAL VOTING POPULATION 1900	VOTING POPULATION PER SENATOR 1900	TOTAL VOTING POPULATION 1950	VOTING POPULATION PER SENATOR 1950
9	Bledsoe	1,410		4,196	
	Cumberland	2,234		9,593	
	Meigs	1,604		3,039	
	Rhea	3,405		8,927	
	Sequatchie	766		2,904	
	Van Buren	700		2,039 *	
	White	3,118		9,244	
			13,320		39,954
10	Clay	1,853		4,528	
	Fentress	1,231		7,057	
	Jackson	3,178		6,719	
	Morgan	2,544		*	
	Overton	2,925		9,474	
	Pickett	1,135		2,565	
	Putnam	3,679		17,071	
			16,645		47,414
11	Franklin	4,686		14,297	
	Grundy	1,737		6,540	
	Marion	4,066		10,998	
	Warren	3,804		13,337	
			14,293		45,172
	Cannon	2,781		5,341	
	DeKalb	3,656		6,984	
	Rutherford	7,677		25,316	
			14,114		37,641
13	Smith	4,372		8,731	
	Wilson	6,550		16,459	
			10,922		25,190
14	Macon	2,938		7,974	
	Sumner	6,394		20,143	
	Trousdale	1,482		3,351	
			10,814		31,468
15	Montgomery	8,712		26,284	
	Robertson	6,274		16,456	
			14,986		42,740
16	Davidson	33,311		211,930	
			16,656		105,965
17	Davidson	33,311		211,930	
			16,656		105,665
18	Bedford	5,777		14,732	
	Coffee	3,720		13,406	
	Moore	1,333		2,340	
			10,830		30,478

* County is in another district for the year indicated.

[fol. 308]

TENNESSEE SENATORIAL DISTRICTS IN 1901 AND 1951, BY COUNTIES AND VOTING POPULATION IN 1900 AND 1950 (CONT.)

SENATORIAL DISTRICT NUMBER	COUNTIES	TOTAL VOTING POPULATION 1900	VOTING POPULATION PER SENATOR 1900	TOTAL VOTING POPULATION 1950	VOTING POPULATION PER SENATOR 1950
19	Lincoln	6,239		15,092	
	Marshall	4,591		11,288	
			10,830		26,380
20	Lewis	1,075		3,413	
	Maury	11,286		24,556	
	Perry	1,957		3,711	
			14,318		31,680
21	Cheatham	2,467		5,263	
	Hickman	3,891		7,598	
	Williamson	6,271		14,064	
			12,629		26,925
22	Giles	7,565		15,935	
	Lawrence	3,730		15,847	
	Wayne	2,974		7,176	
			14,269		38,958
23	Dickson	4,402		11,294	
	Humphreys	3,203		6,588	
	Houston	1,545		3,084	
	Stewart	3,512		5,238	
			12,662		26,204
24	Carroll	5,804		16,472	
	Henry	5,873		15,465	
			11,677		31,937
25	Chester	2,372		6,391	
	Henderson	4,050		10,199	
	Madison	8,756		37,245	
			15,178		53,835
26	Benton	2,712		7,023	
	Decatur	2,356		5,563	
	Hardin	4,357		9,577	
	Hardeman	5,119		13,565	
	McNairy	4,060		11,601	
			18,604		47,329
27	Gibson	9,466		29,832	
			9,466		29,832
28	Lake	1,972		6,252	
	Obion	7,173		18,444	
	Weakley	7,862		18,007	
			17,007		42,703

TENNESSEE SENATORIAL DISTRICTS IN 1901 AND 1951, BY COUNTIES AND VOTING POPULATION IN 1900 AND 1950 (CONT.)

SENATORIAL DISTRICT NUMBER	COUNTIES	TOTAL VOTING POPULATION 1900	VOTING POPULATION PER SENATOR 1900	TOTAL VOTING POPULATION 1950	VOTING POPULATION PER SENATOR 1950
29	Crockett	3,556		9,676	
	Dyer	5,935		20,062	
	Lauderdale	5,075		14,413	
			14,566		44,151
30	Tipton	6,970		15,944	
	Shelby	43,843		312,345	
			16,938 **		109,430 **
31	Haywood	5,447		13,934	
	Fayette	6,180		13,577	
			11,627		27,511
32	Shelby	43,843		312,345	
			16,938 **		109,430 **
33	Shelby	43,843		312,345	
			16,938 **		109,430 **

** In cases where a county has both a direct and floaterial senator, the sum of the voting population of all the counties in such floaterial district is divided by the number of direct and floaterial districts involved to determine the average population for each district.

[Fol. 309]

[fol. 310]

NOTE: Assuming the thirty-three senators are apportioned only on the basis of the voting population, in 1900 each district should have a population of 14,769 and in 1950 a population of 59,956. Using the above assumptions, the results of the 1901 and the 1951 Senate apportionment follows below.

	Districts having less than 90% of the Required Population (Over Represented)	Districts having more than 110% of the Required Population (Under Represented)
1900	10	12
1950	19	11

[fol. 311]

Exhibit 8 to Amendment

STATE AID FOR EDUCATION FOR FISCAL YEAR 1957-58 SHOWING TOTAL AID TO ALL SCHOOL SYSTEMS WITHIN A COUNTY AND AVERAGE STATE AID PER PUPIL IN AVERAGE DAILY ATTENDANCE FOR 1957-58

COUNTY	TOTAL AID FOR EDUCATION 1957-58	TOTAL PUPILS IN A.D.A. 1957-58	STATE AID PER A.D.A. PUPIL 1957-58
Anderson	$ 1,072,910	7,638	$ 140.47
Bedford	680,794	4,746	143.45
Benton	393,956	2,220	177.46
Bledsoe	355,137	1,870	189.91
Blount	1,823,219	13,793	132.18
Bradley	951,561	7,760	122.62
Campbell	1,079,792	7,866	137.27
Cannon	326,345	1,930	169.09
Carroll	862,072	5,343	161.35
Carter	1,353,684	9,733	139.08
Cheatham	325,031	1,957	166.09
Chester	359,344	2,041	176.06
Claiborne	775,104	4,874	159.03
Clay	338,136	1,839	183.87
Cocke	696,026	5,115	136.08
Coffee	912,195	6,134	148.71
Crockett	623,803	3,962	157.45
Cumberland	733,766	4,567	160.67
Davidson	6,118,723	60,566	101.03
Decatur	369,028	1,909	193.31
DeKalb	373,391	2,163	172.63
Dickson	595,595	3,995	149.09
Dyer	816,277	6,443	126.69
Fayette	783,920	5,859	133.80
Fentress	561,082	3,005	186.72
Franklin	781,109	5,478	142.59
Gibson	1,388,383	9,621	144.31
Giles	788,163	5,147	153.13
Grainger	362,731	2,619	140.79
Greene	1,225,599	8,575	142.93
Grundy	437,864	2,680	163.38
Hamblen	830,033	6,194	134.01
Hamilton	4,640,955	43,599	106.45
Hancock	284,147	1,764	161.08
Hardeman	737,553	4,903	150.43
Hardin	678,132	3,927	172.68
Hawkins	921,369	6,888	133.76
Haywood	812,204	5,781	140.50
Henderson	569,405	3,350	169.97
Henry	673,472	4,254	158.31
Hickman	406,737	2,488	163.48
Houston	222,403	1,068	208.24
Humphreys	450,421	2,512	179.31
Jackson	374,059	2,087	179.23
Jefferson	583,795	4,097	142.49
Johnson	429,290	2,440	175.94

[fol. 312]

STATE AID FOR EDUCATION FOR FISCAL YEAR 1957-58 SHOWING TOTAL AID TO ALL SCHOOL SYSTEMS WITHIN A COUNTY AND AVERAGE STATE AID PER PUPIL IN AVERAGE DAILY ATTENDANCE FOR 1957-58 (CONT.)

COUNTY	TOTAL AID FOR EDUCATION 1957-58	TOTAL PUPILS IN A.D.A. 1957-58	STATE AID PER A.D.A. PUPIL 1957-58
Knox	$ 4,943,717	45,062	$ 109.71
Lake	286,475	2,094	136.81
Lauderdale	838,554	5,719	146.63
Lawrence	873,937	6,046	144.55
Lewis	270,598	1,367	197.95
Lincoln	764,015	5,161	148.04
Loudon	689,376	5,452	126.44
McMinn	945,507	[illegible]	127.89
McNairy	775,233	[illegible]	165.75
Macon	407,498	[illegible]	163.92
Madison	1,591,829	12,307	129.34
Marion	649,901	[illegible]	129.95
Marshall	496,176	3,440	144.24
Maury	1,197,095	8,808	135.91
Meigs	244,542	1,335	183.18
Monroe	816,941	5,580	146.41
Montgomery	1,199,011	8,271	144.97
Moore	171,957	780	220.46
Morgan	601,919	3,744	160.77
Obion	809,129	5,609	144.26
Overton	599,156	3,321	180.41
Perry	246,829	1,201	205.52
Pickett	221,302	976	226.74
Polk	425,231	3,042	139.79
Putnam	826,354	5,752	143.66
Rhea	476,006	3,463	137.45
Roane	1,160,847	9,162	126.70
Robertson	759,203	5,345	142.04
Rutherford	1,267,800	8,837	143.46
Scott	742,111	4,601	161.29
Sequatchie	242,073	1,428	169.52
Sevier	852,308	5,429	156.99
Shelby	10,165,532	106,262	95.85
Smith	383,612	2,528	151.75
Stewart	360,403	1,750	205.94
Sullivan	3,063,829	23,777	128.86
Sumner	1,020,576	7,029	145.20
Tipton	936,043	6,743	138.82
Trousdale	192,604	1,032	186.63
Unicoi	488,150	3,568	136.81
Union	266,346	1,779	149.72
Van Buren	215,442	961	224.19
Warren	746,431	4,961	186.63
Washington	1,805,388	12,964	150.46
Wayne	529,202	2,973	178.00
Weakley	659,404	4,465	147.68
White	516,834	3,485	148.30
Williamson	782,567	5,254	148.95
Wilson	799,654	5,407	147.89
	$ 90,229,362	694,627	$ 129.90 average

[fol. 313]

1957-1958 STATE AID FOR EDUCATION PER PUPIL (BASED ON 1957-1958 AVERAGE DAILY ATTENDANCE) BY COUNTY COMPARED TO COUNTY'S ACTUAL AND "BY FORMULA" DIRECT REPRESENTATION IN THE HOUSE - 1951 • TENNESSEE GENERAL ASSEMBLY

COUNTY	STATE AID PER A.D.A. PUPIL 1957-1958	DIRECT REPRESENTATIVES BY FORMULA	ACTUAL DIRECT REPRESENTATIVES	OVER (+) UNDER (-) D REPRESENTA BY FORMU
Pickett	$ 226.74	0	0	
Van Buren	224.19	0	0	
Moore	220.46	0	1	+
Houston	208.24	0	0	
Stewart	205.94	0	1	+
Perry	205.52	0	0	
Lewis	197.95	0	0	
Decatur	193.31	0	0	
Bledsoe	189.91	0	0	
Fentress	186.72	0	0	
Trousdale	186.63	0	0	
Warren	186.63	1	1	
Clay	183.87	0	0	
Meigs	183.18	0	0	
Overton	180.41	0	1	+
Humphreys	179.31	0	0	
Jackson	179.23	0	1	+
Wayne	178.00	0	0	
Benton	177.46	0	0	
Chester	177.06	0	1	+
Johnson	175.94	0	0	
Hardin	172.68	0	1	+
DeKalb	172.63	0	1	+
Henderson	169.97	0	0	
Sequatchie	169.52	0	0	
Cannon	169.09	0	1	+
Cheatham	166.09	0	0	
McNairy	165.75	0	1	+
Macon	163.92	0	0	
Hickman	163.48	0	1	+
Grundy	163.38	0	0	
Carroll	161.35	1	1	
Scott	161.29	0	0	
Hancock	161.08	0	0	
Morgan	160.77	0	0	
Cumberland	160.67	0	0	
Claiborne	159.03	0	1	+
Henry	158.31	1	1	
Crockett	157.45	0	1	+
Sevier	156.99	0	1	+
Giles	153.13	1	1	
Smith	151.75	0	1	+
Washington	150.46	1	1	
Hardeman	150.43	1	1	
Union	149.72	0	0	
Dickson	149.09	0	1	+

[fol. 314]

1957-1958 STATE AID FOR EDUCATION PER PUPIL (BASED ON 1957-1958 AVERAGE DAILY ATTENDANCE) BY COUNTY COMPARED TO COUNTY'S ACTUAL AND "BY FORMULA" DIRECT REPRESENTATION IN THE HOUSE - 1951 * TENNESSEE GENERAL ASSEMBLY (CONT.)

COUNTY	STATE AID PER A.D.A. PUPIL 1957-1958	DIRECT REPRESENTATIVES BY FORMULA	ACTUAL DIRECT REPRESENTATIVES	OVER (+) OR UNDER (-) DIRECT REPRESENTATIVES BY FORMULA
Williamson	$ 148.95	1	1	
Coffee	148.71	1	1	
White	148.30	0	1	+
Lincoln	148.04	1	1	
Wilson	147.89	1	1	
Weakley	147.68	1	1	
Lauderdale	146.63	1	1	
Monroe	146.41	0	1	+
Sumner	145.20	1	1	
Montgomery	144.97	1	1	
Lawrence	144.55	1	1	
Gibson	144.31	1	2	+
Obion	144.26	1	1	
Marshall	144.24	0	1	+
Putnam	143.66	1	1	
Rutherford	143.46	1	1	
Bedford	143.45	1	1	
Greene	142.93	1	1	
Franklin	142.59	1	1	
Jefferson	142.49	0	0	
Robertson	142.04	1	1	
Grainger	140.79	0	0	
Haywood	140.50	1	1	
Anderson	140.47	1	0	-
Polk	139.79	0	0	
Carter	139.08	1	0	-
Tipton	138.82	1	1	
Rhea	137.45	0	0	
Campbell	137.27	1	0	-
Lake	136.81	0	1	+
Unicoi	136.81	0	0	
Cocke	136.08	0	1	+
Maury	135.91	1	1	
Hamblen	134.01	1	0	-
Fayette	133.80	1	1	
Hawkins	133.76	1	1	
Blount	132.18	1	1	
Marion	129.95	0	1	+
Average	129.90			
Madison	129.34	1	2	+
Sullivan	128.86	2	1	-
McMinn	127.89	1	1	
Roane	126.70	1	1	
Dyer	126.69	1	1	
Loudon	126.44	0	0	
Bradley	122.62	1	0	-

1957-1958 STATE AID FOR EDUCATION PER PUPIL (BASED ON 1957-1958 AVERAGE DAILY ATTENDANCE) BY COUNTY COMPARED TO COUNTY'S ACTUAL AND "BY FORMULA" DIRECT REPRESENTATION IN THE HOUSE - 1951 * TENNESSEE GENERAL ASSEMBLY (CONT.)

COUNTY	STATE AID PER A.D.A. PUPIL 1957-1958	DIRECT REPRESENTATIVES BY FORMULA	ACTUAL DIRECT REPRESENTATIVES	OVER (+) OR UNDER (-) DIRECT REPRESENTATIVES BY FORMULA
Knox	$ 109.71	7	3	-
Hamilton	106.45	6	3	-
Davidson	101.03	10	6	-
Shelby	95.85	15	7	-
	TOTAL	78	76	

* 1951-59 Tennessee General Assemblies have had same Direct Representation Composition.

[fol. 316]

COMPARISON OF THE DISTRIBUTION OF STATE AID FOR EDUCATION PER AVERAGE DAILY ATTENDANCE PUPIL FOR COUNTIES WITH AN EXCESS OR A DEFICIENCY OF DIRECT REPRESENTATIVES ACCORDING TO 1950 VOTING POPULATION AND ARTICLE II, SECTION 5, OF THE TENNESSEE STATE CONSTITUTION, IN 1951 TENNESSEE GENERAL ASSEMBLY

COUNTIES	VOTING POPULATION 1950*	RATIO	NUMBER OF DIRECT REPRESENTATIVES BY FORMULA**	ACTUAL DIRECT REPRESENTATIVES 1951	STATE AID PER A.D.A. PUPIL 1957-58
Cannon	5,341	.2672	0	1	$ 169.09
Chester	6,391	.3198	0	1	176.06
Claiborne	12,799	.6404	0	1	159.03
Cocke	12,572	.6291	0	1	136.08
Crockett	9,676	.4842	0	1	157.45
DeKalb	6,984	.3495	0	1	172.63
Dickson	11,294	.5651	0	1	149.09
Gibson	48,132	1.4927	1	2	144.31
Hardin	16,908	.4792	0	1	172.68
Hickman	7,598	.3802	0	1	163.48
Jackson	6,719	.3362	0	1	179.23
Lake	6,252	.3128	0	1	136.81
McNairy	11,601	.5805	0	1	165.75
Madison	37,245	1.8636	1	2	129.34
Marion	10,998	.5503	0	1	129.95
Marshall	11,288	.5648	0	1	144.24
Monroe	12,884	.6447	0	1	146.41
Moore	2,340	.1171	0	1	220.46
Overton	9,474	.4740	0	1	180.41
Sevier	12,793	.6401	0	1	156.99
Smith	8,731	.4369	0	1	151.75
Stewart	5,238	.2621	0	1	205.94
White	9,244	.4625	0	1	148.30
		TOTAL	2	25	

These 23 counties have 23 more direct representatives than the Constitution's formula provides.

These 10 counties have 25 less direct representatives than the Constitution's formula provides.

Anderson	33,990	1.7007	1	0	140.47
Bradley	18,273	.9143	1	0	122.62
Campbell	17,477	.8745	1	0	137.27
Carter	23,303	1.1660	1	0	139.08
Davidson	211,930	10.6043	10	6	101.03
Hamblen	14,090	.7050	1	0	134.01
Hamilton	131,971	6.6034	6	3	106.45
Knox	140,559	7.0331	7	3	109.71
Shelby	312,345	15.6287	15	7	95.85
Sullivan	55,712	2.7876	2	1	128.86
		TOTAL	45	20	

Ratio = $\frac{\text{County Voting Population} \times 99}{\text{Total Tennessee Voting Population}}$ Total Tennessee Voting Population in 1950 was 1,978,548.

* U.S. Census of Population: 1950, Vol. II, Characteristics of the Population, Part 42, Tennessee, Chapter B, Table 42, pp. 92-97.

** Formula according to Art. II, Sec. 5, Tenn. State Constitution.

[fol. 317]

COMPARISONS OF APPORTIONMENT OF 1957-58 STATE AID FOR EDUCATION PER PUPIL IN AVERAGE DAILY ATTENDANCE FOR COUNTIES WITH AN EXCESS OR A DEFICIENCY OF DIRECT REPRESENTATIVES ACCORDING TO 1950 VOTING POPULATION AND ARTICLE II, SECTION 5 OF THE TENNESSEE STATE CONSTITUTION

COUNTIES	A.D.A. PUPILS IN COUNTY 1957-58	STATE AID FOR EDUCATION 1957-58	STATE AID PER A.D.A. PUPIL 1957-58	AMOUNT IF DISTRIBUTED EQUALLY ACCORDING TO A.D.A.*
Cannon	1,930	$ 326,345	$ 169.09	$ 250,707
Chester	2,041	359,344	176.06	265,126
Claiborne	4,874	775,104	159.03	633,133
Cocke	5,115	696,026	136.08	664,439
Crockett	3,962	623,803	157.45	514,664
DeKalb	2,163	373,391	172.63	280,974
Dickson	3,995	595,595	149.09	518,951
Gibson	9,621	1,388,383	144.31	1,249,768
Hardin	3,927	678,123	172.68	510,117
Hickman	2,488	406,737	163.48	323,191
Jackson	2,087	374,059	179.23	271,101
Lake	2,094	286,475	136.81	272,011
McNairy	4,677	775,233	165.75	607,542
Madison	12,307	1,591,829	129.34	1,598,679
Marion	5,001	649,901	129.95	649,630
Marshall	3,440	496,176	144.24	446,856
Monroe	5,580	816,941	146.41	724,842
Moore	780	171,957	220.46	101,322
Overton	3,321	599,156	180.41	431,398
Sevier	5,429	852,308	156.99	705,227
Smith	2,528	383,612	151.75	328,387
Stewart	1,750	360,403	205.94	227,325
White	3,485	516,834	148.30	452,702
	92,595	$ 14,097,735		$ 12,028,092

Collectively these 23 counties receive 17.21% more state aid than formula* would allow and have 23 more direct representatives than Constitution's formula provides.

These 10 counties collectively receive 20.81% less state aid than formula* would allow and have 25 less direct representatives than Constitution's formula provides.

Anderson	7,638	1,072,910	140.47	992,176
Bradley	7,760	951,561	122.62	1,008,024
Campbell	7,866	1,079,792	137.27	1,021,793
Carter	9,733	1,353,684	139.08	1,264,317
Davidson	60,566	6,118,723	101.03	7,867,523
Hamblen	6,194	830,033	134.01	804,601
Hamilton	43,599	4,640,955	106.45	5,663,510
Knox	45,062	4,943,717	109.71	5,853,554
Shelby	106,262	10,185,532	95.85	13,803,434
Sullivan	23,777	3,063,829	128.86	3,088,632
	318,457	$ 34,240,736		$ 41,367,565

* $\frac{\text{State Aid for Education}}{\text{Pupils in Average Daily Attendance}}$ = average State per A.D.A. Pupil

for above 23 counties with excess of direct representatives: $\frac{\$14,097,735}{92,595} = \$152.25$

for above 10 counties with deficiency of direct representatives: $\frac{\$34,240,736}{318,457} = \$107.52$

for all counties in the State: $\frac{\$90,229,362}{694,627} = \$129.90$

[fol. 318]

Exhibit 9 to Amendment

1957-58 APPORTIONMENT OF 2c OF 7c STATE GASOLINE AND MOTOR FUEL TAX, BY COUNTY

COUNTY	1957 MOTOR VEHICLE REGISTRATION*	GASOLINE & MOTOR FUEL TAX APPORTIONMENT 1957-58	APPORTIONMENT PER REGISTERED MOTOR VEHICLE
Anderson	23,335	$ 226,482	$ 9.71
Bedford	9,622	190,320	19.78
Benton	4,230	165,600	39.15
Bledsoe	2,135	147,296	68.99
Blount	22,971	247,221	10.76
Bradley	14,766	186,659	12.64
Campbell	8,199	200,061	24.40
Cannon	3,220	144,893	45.00
Carroll	8,935	207,544	23.23
Carter	13,224	203,314	15.37
Cheatham	3,824	149,452	39.08
Chester	3,449	149,730	43.41
Claiborne	5,147	188,944	36.71
Clay	1,846	139,521	75.58
Cocke	7,237	184,050	25.43
Coffee	10,109	184,135	18.21
Crockett	4,804	155,987	31.94
Cumberland	6,650	205,314	30.87
Davidson	138,233	630,958	4.56
Decatur	3,119	154,855	49.65
Dekalb	3,413	154,141	45.16
Dickson	6,873	180,741	26.73
Dyer	11,772	211,272	17.95
Fayette	5,790	221,251	38.21
Fentress	3,224	178,884	55.49
Franklin	8,657	201,816	23.31
Gibson	16,340	240,268	14.70
Giles	7,600	210,753	27.73
Grainger	3,872	155,624	40.19
Greene	14,939	231,300	15.48
Grundy	3,100	155,154	50.05
Hamblen	12,377	155,823	12.59
Hamilton	80,391	471,544	5.87
Hancock	2,134	123,498	57.87
Hardeman	5,332	209,521	39.30
Hardin	5,555	194,385	34.99
Hawkins	8,829	198,729	22.51
Haywood	5,831	198,295	34.01
Henderson	5,255	184,656	35.14
Henry	8,510	204,024	23.97
Hickman	4,006	190,146	47.47
Houston	1,704	132,4[illegible]	77.74
Humphreys	3,772	180,697	47.90
Jackson	2,442	156,252	63.99
Jefferson	7,411	166,359	22.45
Johnson	3,380	152,968	45.26
Knox	84,929	486,355	5.73
Lake	3,389	139,389	41.13

* Excluding trailers.

Note: Apportionment of 2c of 7c State Gasoline and Motor Fuel Tax shown hereon is to counties only.

{fol. 319}

1957-58 APPORTIONMENT OF 2¢ OF 7¢ STATE GASOLINE AND MOTOR FUEL TAX, BY COUNTY (CONT.)

COUNTY	1957 MOTOR VEHICLE REGISTRATION*	GASOLINE & MOTOR FUEL TAX APPORTIONMENT 1957-58	APPORTIONMENT PER REGISTERED MOTOR VEHICLE
Lauderdale	7,534	$ 195,459	$ 25.94
Lawrence	9,617	215,166	22.37
Lewis	2,290	142,334	62.15
Lincoln	8,595	204,370	23.78
Loudon	9,220	163,189	17.70
McMinn	11,721	197,225	16.83
McNairy	5,910	191,254	32.36
Macon	4,102	155,463	37.90
Madison	20,832	252,537	12.12
Marion	6,559	189,283	28.86
Marshall	7,052	169,840	24.08
Maury	16,126	229,739	14.25
Meigs	1,816	134,376	74.00
Monroe	7,938	212,279	27.08
Montgomery	15,732	227,239	14.44
Moore	1,775	120,929	68.13
Morgan	4,704	185,275	39.39
Obion	10,244	207,217	20.23
Overton	4,196	172,007	40.99
Perry	1,672	158,578	94.84
Pickett	1,201	128,014	106.59
Polk	3,695	166,882	45.16
Putnam	10,082	167,502	16.61
Rhea	6,652	154,227	23.19
Roane	12,948	191,360	14.78
Robertson	9,133	194,592	21.31
Rutherford	17,308	239,960	13.86
Scott	4,099	188,796	46.06
Sequatchie	2,731	140,396	51.41
Sevier	8,362	203,931	24.39
Shelby	196,267	892,076	4.55
Smith	4,622	158,577	34.31
Stewart	2,436	170,377	69.94
Sullivan	42,013	288,376	6.86
Sumner	12,843	212,383	16.54
Tipton	9,408	198,388	21.09
Trousdale	2,142	122,312	57.10
Unicoi	5,137	144,245	28.08
Union	3,443	141,113	40.99
Van Buren	1,046	135,871	129.90
Warren	8,852	183,909	20.78
Washington	23,483	225,713	9.61
Wayne	3,436	204,722	59.58
Weakley	8,648	207,326	23.97
White	5,532	168,468	30.45
Williamson	9,347	203,927	21.82
Wilson	10,220	205,383	20.10
	1,208,683	$ 19,142,240	$ 15.84 Average

* Excluding trailers

Note: Apportionment of 2¢ of 7¢ State Gasoline and Motor Fuel Tax shown hereon is to counties only.

[fol. 320]

1957-1958 APPORTIONMENT OF 2c OF 7c STATE GASOLINE AND MOTOR FUEL TAX PER REGISTERED VEHICLE, BY COUNTY, COMPARED TO COUNTY'S ACTUAL AND "BY FORMULA" DIRECT REPRESENTATION IN THE HOUSE - 1951 TENNESSEE GENERAL ASSEMBLY*

COUNTY	APPORTIONMENT PER REGISTERED MOTOR VEHICLE**	DIRECT REPRESENTATIVES BY FORMULA	ACTUAL DIRECT REPRESENTATIVES	OVER (+) OR UNDER (-) DIRECT REPRESENTATIVES BY FORMULA
Van Buren	$ 129.90	0	0	
Pickett	106.59	0	0	
Perry	94.84	0	0	
Houston	77.74	0	0	
Clay	75.58	0	0	
Meigs	74.00	0	0	
Stewart	69.94	0	1	+
Bledsoe	68.99	0	0	
Moore	68.13	0	1	+
Jackson	63.99	0	1	+
Lewis	62.15	0	0	
Wayne	59.58	0	0	
Hancock	57.87	0	0	
Trousdale	57.10	0	0	
Fentress	55.49	0	0	
Sequatchie	51.41	0	0	
Grundy	50.05	0	0	
Decatur	49.65	0	0	
Humphreys	47.90	0	0	
Hickman	47.47	0	1	+
Scott	46.06	0	0	
Johnson	45.26	0	0	
DeKalb	45.16	0	1	+
Polk	45.16	0	0	
Cannon	45.00	0	1	+
Chester	43.41	0	1	+
Lake	41.13	0	1	+
Union	40.99	0	0	
Overton	40.99	0	1	+
Grainger	40.19	0	0	
Morgan	39.39	0	0	
Hardeman	39.30	1	1	
Benton	39.15	0	0	
Cheatham	39.08	0	0	
Fayette	38.21	1	1	
Macon	37.90	0	0	
Claiborne	36.71	0	1	+
Henderson	35.14	0	0	
Hardin	34.99	0	1	+
Smith	34.31	0	1	+
Haywood	34.01	1	1	
McNairy	32.36	0	1	+
Crockett	31.94	0	1	+
Cumberland	30.87	0	0	
White	30.45	0	1	+
Marion	28.86	0	1	+
Unicoi	28.08	0	0	

* 1951-1959 Tennessee General Assemblies have had same Direct Representation Composition.

** Excludes trailers.

[fol. 321]

1957-1958 APPORTIONMENT OF 2c OF 7c STATE GASOLINE AND MOTOR FUEL TAX PER REGISTERED VEHICLE, BY COUNTY, COMPARED TO COUNTY'S ACTUAL AND "BY FORMULA" DIRECT REPRESENTATION IN THE HOUSE - 1951 TENNESSEE GENERAL ASSEMBLY* (CONT.)

COUNTY	APPORTIONMENT PER REGISTERED MOTOR VEHICLE**	DIRECT REPRESENTATIVES BY FORMULA	ACTUAL DIRECT REPRESENTATIVES	OVER (+) OR UNDER (-) DIRECT REPRESENTATIVES BY FORMULA
Giles	$ 27.73	1	1	
Monroe	27.08	0	1	+
Dickson	26.73	0	1	+
Lauderdale	25.94	1	1	
Cocke	25.43	0	1	+
Campbell	24.40	1	0	-
Sevier	24.39	0	1	+
Marshall	24.08	0	1	+
Weakley	23.97	1	1	
Henry	23.97	1	1	
Lincoln	23.78	1	1	
Franklin	23.31	1	1	
Carroll	23.23	1	1	
Rhea	23.19	0	0	
Hawkins	22.51	1	1	
Jefferson	22.45	0	0	
Lawrence	22.37	1	1	
Williamson	21.82	1	1	
Robertson	21.31	1	1	
Tipton	21.09	1	1	
Warren	20.78	1	1	
Obion	20.23	1	1	
Wilson	20.10	1	1	
Bedford	19.78	1	1	
Coffee	18.21	1	1	
Dyer	17.95	1	1	
Loudon	17.70	0	0	
McMinn	16.83	1	1	
Putnam	16.61	1	1	
Sumner	16.54	1	1	
Average	15.84			
Greene	15.48	1	1	
Carter	15.37	1	0	-
Roane	14.78	1	1	
Gibson	14.70	1	2	+
Montgomery	14.44	1	1	
Maury	14.25	1	1	
Rutherford	13.86	1	1	
Bradley	12.64	1	0	-
Hamblen	12.59	1	0	-
Madison	12.12	1	2	+
Blount	10.76	1	1	
Anderson	9.71	1	0	-
Washington	9.61	1	1	
Sullivan	6.86	2	1	-
Hamilton	5.87	6	3	-
Knox	5.73	7	3	-
Davidson	4.56	10	6	-
Shelby	4.55	15	7	-

* 1951-1959 Tennessee General Assemblies have had same Direct Representation Composition.

** Excludes trailers.

[fol. 322]

COMPARISON OF THE DISTRIBUTION OF 2¢ OF THE STATE GASOLINE AND MOTOR FUEL TAX PER MOTOR VEHICLE FOR COUNTIES WITH AN EXCESS OR A DEFICIENCY OF DIRECT REPRESENTATIVES ACCORDING TO 1950 VOTING POPULATION AND TENNESSEE STATE CONSTITUTION, ARTICLE II, SECTION 5, IN 1951 TENNESSEE GENERAL ASSEMBLY

COUNTIES	VOTING POPULATION 1950*	RATIO	NUMBER OF DIRECT REPRESENTATIVES BY FORMULA**	ACTUAL DIRECT REPRESENTATIVES 1951	APPORTIONMENT PER MOTOR VEHICLE***
Cannon	5,341	.2672	0	1	$ 45.00
Chester	6,391	.3198	0	1	43 41
Claiborne	12,799	.6404	0	1	36.71
Cocke	12,572	.6291	0	1	25.43
Crockett	9,676	.4842	0	1	31 94
DeKalb	6,984	.3495	0	1	45.16
Dickson	11,294	.5651	0	1	26.73
Gibson	48,132	1.4927	1	2	14.70
Hardin	16,908	.4792	0	1	34.99
Hickman	7,598	.3002	0	1	47.47
Jackson	6,719	.3362	0	1	36.99
Lake	6,252	.3128	0	1	41.13
McNairy	11,601	.5805	0	1	32.36
Madison	37,245	1.8636	1	2	12.12
Marion	10,998	.5503	0	1	28.85
Marshall	11,288	.5648	0	1	24.08
Monroe	12,884	.6447	0	1	27 08
Moore	2,340	.1171	0	1	68.13
Overton	9,474	.4740	0	1	40.99
Sevier	12,793	.6401	0	1	24.39
Smith	8,731	.4369	0	1	34.31
Stewart	5,238	.2621	0	1	69.94
White	9,244	.4625	0	1	30.45
		TOTAL	2	25	

These 23 counties have 23 more direct representatives than the Constitution's formula provides.

These 10 counties have 25 less direct representatives than the Constitution's formula provides.

Anderson	33,990	1.7007	1	0	9.71
Bradley	18,273	.9143	1	0	12.64
Campbell	17,477	.8745	1	0	24.40
Carter	23,303	1.1660	1	0	15.37
Davidson	211,930	10.6043	10	6	4.56
Hamblen	14,090	.7050	1	0	12.59
Hamilton	131,971	6.6034	6	3	5.87
Knox	140,559	7.0331	7	3	5.73
Shelby	312,345	15.6287	15	7	4.55
Sullivan	55,712	2.7876	2	1	6.86
			45	20	

Ratio = $\frac{\text{County Voting Population} \times 99}{\text{Total Tennessee Voting Population}}$ Total Tennessee Voting Population in 1950 was 1,978,548.

* U.S. Census of Population: 1950, Vol. II, Characteristics of the Population, Part 42, Tennessee, Chapter B, Table 42, pp. 92-97.

** Formula according to Art. II, Sec. 5, Tenn. State Constitution.

*** 1957-58 Apportionment of 2¢ of the 7¢ per gallon State gasoline and motor fuel tax divided by total 1957 motor vehicle registration exclusive of trailers.

[fol. 323]

COMPARISONS OF APPORTIONMENT OF 2c OF THE 7c 1957-58 STATE GASOLINE AND MOTOR FUEL TAX PER REGISTERED VEHICLE, FOR COUNTIES WITH AN EXCESS OR A DEFICIENCY OF DIRECT REPRESENTATIVES ACCORDING TO THE 1950 VOTING POPULATION AND ARTICLE II, SECTION 5 OF THE TENNESSEE CONSTITUTION

COUNTIES	MOTOR VEHICLE REGISTRATION 1957	GASOLINE & MOTOR FUEL TAX APPORTIONMENT 1957-58	APPORTIONMENT PER VEHICLE	AMOUNT IF APPORTIONED EQUALLY PER VEHICLE*
Carroll	3,220	$ 144,893	$ 45.00	$ 51,005
Chester	3,449	149,730	43.41	54,632
Claiborne	5,147	188,944	36.71	81,528
Cocke	7,237	184,030	25.43	114,634
Crockett	4,884	155,987	31.94	77,363
DeKalb	3,413	154,141	45.16	54,062
Dickson	6,873	183,741	26.73	108,868
Gibson	16,340	240,268	14.70	258,826
Hardin	5,555	194,385	34.99	87,991
Hickman	4,006	190,146	47.47	63,455
Jackson	2,442	156,252	63.99	38,681
Lake	3,389	139,389	41.13	53,682
McNairy	5,910	191,254	32.36	93,614
Madison	20,832	252,537	12.12	329,979
Marion	6,559	189,283	28.86	103,895
Marshall	7,052	169,840	24.08	171,704
Monroe	7,938	212,279	27.08	125,738
Moore	1,775	120,929	68.13	28,116
Overton	4,196	172,007	40.99	66,465
Sevier	8,362	203,931	24.39	132,454
Smith	4,622	158,577	34.31	73,212
Stewart	2,436	170,377	69.94	38,568
White	5,532	168,468	30.45	87,627
	141,169	$ 4,091,408		$ 2,236,099

Collectively these 23 counties receive 83.0% more state aid than formula* would allow and have 23 more direct representatives than Constitution's formula provides.

Collectively these 10 counties receive 159.8% less state aid than formula* would allow and have 25 less direct representatives than Constitution's formula provides.

Anderson	23,335	226,482	9.71	369,626
Bradley	14,766	186,659	12.64	233,893
Campbell	8,199	200,061	24.40	129,872
Carter	13,224	203,314	15.37	209,468
Davidson	138,233	630,958	4.56	2,189,611
Hamblen	12,377	155,823	12.59	196,052
Hamilton	80,391	471,544	5.87	1,273,393
Knox	84,929	486,355	5.73	1,345,275
Shelby	196,267	892,076	4.55	3,108,869
Sullivan	42,013	288,376	6.86	665,486
	613,734	$ 3,741,648		$ 9,721,545

* Total Gasoline and Motor Fuel Tax / Total Motor Vehicle Registration exclusive of trailers = average state aid per vehicle

for above 23 counties with excess of direct representatives: $\frac{\$4,091,408}{141,169} = \$28.98$

for above 10 counties with deficiency of direct representatives: $\frac{\$3,741,648}{613,734} = \$6.10$

for all counties in the State: $\frac{\$19,142,240}{1,208,683} = \$15.84$

[fol. 324]

COMPARISONS OF APPORTIONMENT OF 2¢ OF THE 7¢ 1957-58 STATE GASOLINE AND MOTOR FUEL TAX PER CAPITA, FOR COUNTIES WITH AN EXCESS OR A DEFICIENCY OF DIRECT REPRESENTATIVES ACCORDING TO THE 1950 VOTING POPULATION AND ARTICLE II SECTION 5 OF THE TENNESSEE STATE CONSTITUTION

COUNTIES	COUNTY POPULATION 1950	GASOLINE AND MOTOR FUEL TAX APPORTIONMENT 1957-1958	APPORTIONMENT PER CAPITA	AMOUNT IF APPORTIONED EQUALLY PER CAPITA*
Cannon	9,174	$ 144,893	$ 15.79	$ 53,393
Chester	11,149	149,730	13.43	64,887
Claiborne	24,788	188,944	7.80	144,266
Cocke	22,991	164,050	8.01	133,808
Crockett	16,624	155,287	9.38	96,752
DeKalb	11,680	154,141	13.20	67,978
Dickson	18,805	183,741	9.77	109,445
Gibson	48,132	240,258	4.99	280,128
Hardin	16,908	194,385	11.50	98,405
Hickman	13,353	190,146	14.24	77,714
Jackson	12,348	156,252	12.65	71,865
Lake	11,655	109,389	11.96	67,832
McNairy	20,390	191,254	9.38	118,670
Madison	60,128	252,537	4.20	349,951
Marion	20,520	189,283	9.22	119,426
Marshall	17,768	169,840	9.56	103,410
Monroe	24,513	212,279	8.66	142,666
Moore	3,948	120,929	30.63	22,977
Overton	17,566	172,007	9.79	102,234
Sevier	23,375	203,931	8.72	136,043
Smith	14,098	158,577	11.25	82,050
Stewart	9,175	170,377	18.57	53,399
White	16,204	168,468	10.40	94,307
	445,292	$ 4,091,408		$ 2,591,606

Collectively these 23 counties receive 57.9% more state aid than formula* would allow and have 23 more direct representatives that Constitution's formula provides.

Collectively these 10 counties receive 136.9% less state aid than formula* would allow and have 25 less direct representatives than Constitution's formula provides.

Anderson	59,407	226,482	3.81	345,749
Bradley	32,338	186,639	5.77	188,207
Campbell	34,369	200,061	5.82	200,028
Carter	42,432	203,314	4.79	246,954
Davidson	321,758	630,958	1.96	1,872,632
Hamblen	23,976	155,823	6.50	139,540
Hamilton	208,255	471,544	2.26	1,212,044
Knox	223,007	486,355	2.18	1,297,901
Shelby	482,393	892,076	1.85	2,807,527
Sullivan	95,063	288,376	3.03	553,267
	1,522,998	$ 3,741,648		$ 8,863,849

* Total Gasoline & Motor Fuel Tax / Total State Population 1950 = average state aid per capita

for above 23 counties with excess of direct representatives: $\frac{\$4,091,408}{445,292} = \$9.19$

for above 10 counties with deficiency of direct representatives: $\frac{\$3,741,648}{1,522,998} = \$2.46$

for all counties in the State: $\frac{\$19,142,240}{3,291,718} = \$5.82$

[fol. 325]

EXHIBIT 10 TO AMENDMENT

APPORTIONMENT OF SEATS IN THE HOUSE OF REPRESENTATIVES - 1901

(96 TENNESSEE COUNTIES)

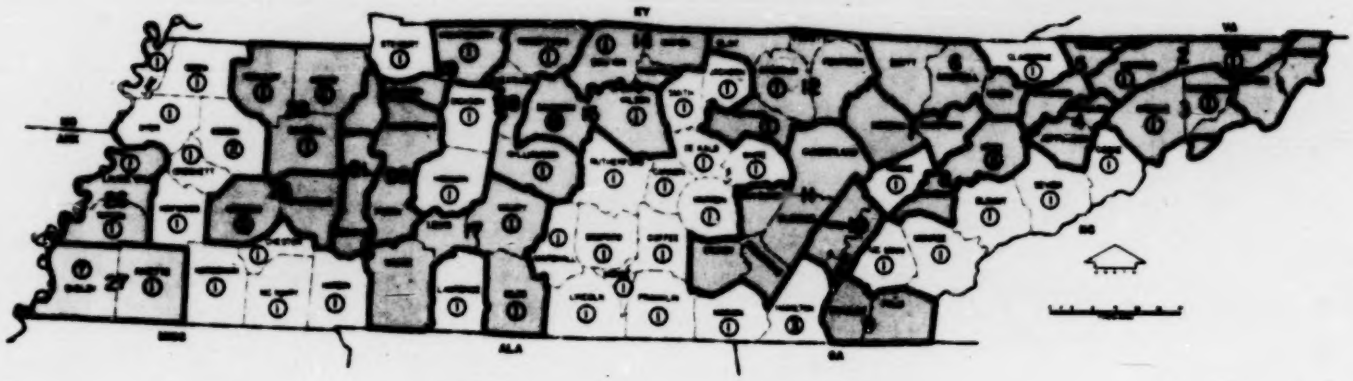
Number of Direct Representatives is Shown: ① or ①

Floterial District Number is Shown:
(each electing one representative)

EXHIBIT 11 TO AMENDMENT

APPORTIONMENT OF SEATS IN THE HOUSE OF REPRESENTATIVES - 1951*

(95 TENNESSEE COUNTIES)



Number of Direct Representatives is Shown: ① or ①

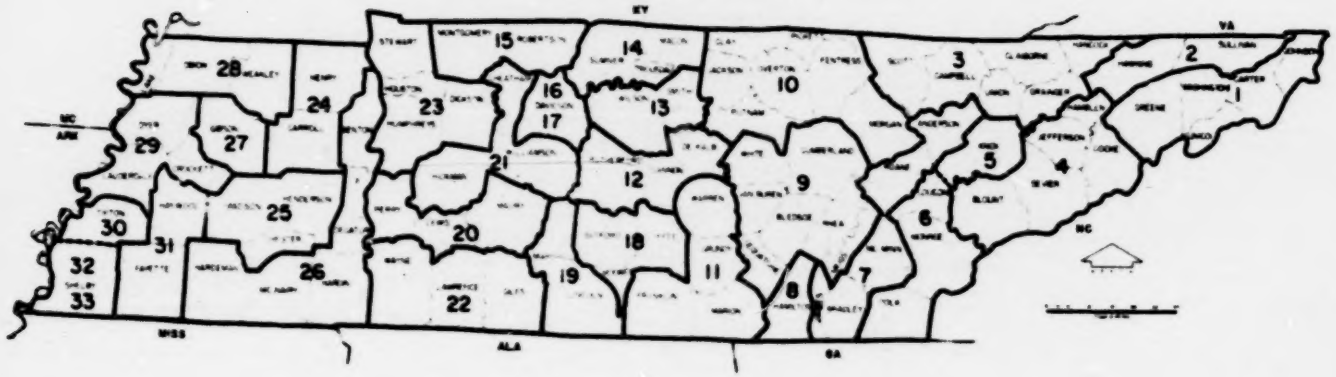
Pictorial District Number is Shown:
(each electing one representative)

* Some apportionment exists for the 1959 legislature

EXHIBIT 12 TO AMENDMENT

APPORTIONMENT OF SEATS IN THE SENATE - 1901

(96 TENNESSEE COUNTIES)



Senatorial District Boundary

Single County District Boundary where County Shares Another District with Other County or Counties

[fol. 328] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

PETITION OF CITY OF KNOXVILLE TO INTERVENE—
Filed March 22, 1960

The petition of the City of Knoxville, a municipal corporation of approximately one hundred and thirty thousand citizens, incorporated under the laws of the State of Tennessee respectfully represents to this Honorable Court as follows:

That the City Council representing the citizens of Knoxville, who are citizens of the State of Tennessee and of the United States and in Knox County, and who are entitled to vote for members of the Legislature for the State of Tennessee have by petition duly passed, authorized and directed the Mayor and the City Attorney to file this intervening petition on behalf of the Council and of all the qualified voters in said City, County and State, residing in the City of Knoxville.

[fol. 329] The intervening petitioner respectfully petitions that the three election commissioners who hold elections in the City of Knoxville and Knox County, be included and made parties-defendant in this cause, their names being Robert Lavin, Chairman, 705 Market Street, Knoxville, Tennessee; T. Edward Cole, 503 Empire Building, Knoxville, Tennessee; and Frank L. Henderlight, 3900 McCalla Avenue, Knoxville, Tennessee.

A copy of the instructions to election officials and watchers is appended hereto as Exhibit I to this petition but will not be copied herein.

Petitioner and the citizens of Knoxville, Knox County, State of Tennessee, are now denied the right to equal suffrage in free and equal elections which right is granted to them by the Constitution of the State of Tennessee and by the Fourteenth Amendment to the Constitution of the

United States; that there is no equality in the benefits and protections of the general laws and special acts passed by the Legislature with reference to the petitioner and all other citizens of Knoxville and Knox County, and that citizens of Knoxville and Knox County have been and are being unlawfully and illegally discriminated against by reason of and because of the inequality of suffrage in the matter of general elections, particularly election of members of the State Legislature and the laws passed by said illegal and unconstitutional Assembly.

Petitioner desires to intervene in this cause for the reasons aforesaid and for the further reason that citizens of the City of Knoxville, Knox County, Tennessee, and the Election Commissioners in and for said Knox County, Tennessee are not specifically named as plaintiffs in said cause nor as defendants to said cause, although they are entitled to present to this Court the interest of said citizens for the purposes of the complaint filed herein.

[fol. 330] Petitioner and those citizens similarly situated adopt the allegations of the original complaint and desire to make the Knox County Election Commissioners parties-defendant. They further desire to present for the consideration of the Court the gross inequalities being practiced on all the citizens and qualified voters of the City of Knoxville, Knox County, Tennessee, by the present unconstitutional apportionment of the Tennessee Legislature.

Wherefore, Premises Considered, Petitioner Prays:

1. That it be given leave of Court to intervene in this cause as a party-plaintiff and as a representative of all the citizens and voters of Knoxville, Knox County, Tennessee, and be granted such rights as it may be entitled to have as plaintiff.

2. That the election officials, that is, the Commissioners of Elections of Knox County, Tennessee, be made parties-defendant in said cause so that adequate, whole, and exact justice may be done herein.

3. That process issue to the defendants, Knox County Election Commissioners, by this court directing under the rules of the Court that they be made parties-defendant herein, and that copies of this petition be served on each

member at the office of the Knox County Election Commission in the County Court House Building at Knoxville, Knox County, Tennessee, requiring them to answer and plead said cause or to show cause why they should not be named among the parties-defendant.

4. Petitioner prays for general relief.

C. R. McClain, City Attorney, City of Knoxville, Tenn.

[fol. 331] *Duly sworn to by John J. Duncan, jurat omitted in printing.*

[fol. 332]

ATTACHMENT TO PETITION

Knoxville, Tennessee, Tuesday, November 24, 1959.

The Council of the City of Knoxville met in regular session Tuesday, November 24, 1959, at 7:30 o'clock P. M. Present and presiding was His Honor, Mayor Duncan. Also present were Councilmen Bass, Carey, Christenberry, Friedman, O'Connor, Turner and Walker.

Councilman O'Connor moved that the minutes as mailed to each member of Council be approved without additions or corrections. The motion was duly seconded by Councilman Christenberry and carried.

Among other proceedings had was the following:

Resolution No. 2690, entitled, "A Resolution Authorizing the Mayor of the City of Knoxville to Intervene and Participate in the Case of Baker, et al. vs. Carr, et al., Pending in the United States District Court for the Middle District of Tennessee, and Having as its Object the Reapportionment of the General Assembly of Tennessee", was presented and read and Councilman Carey moved that same be adopted on first and final reading. The motion was duly seconded by Councilman Friedman and on roll call Councilmen Bass, Carey, Christenberry, Friedman, O'Connor, Turner and Walker voted "Yea". The resolution was declared adopted on first and final reading and is as follows:

(See page 3* for copy of Resolution No. 2690)

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*Side folio 334.

Councilman Carey moved to adjourn. The motion was duly seconded and carried.

John J. Duncan
Presiding Officer of the Council

Nessie M. Beeler
Recorder

[fol. 333] I, Nessie M. Beeler, Recorder of the City of Knoxville, Tennessee, do hereby certify that the foregoing is a true and correct copy of all that part of the minutes of the meeting of the Council of the City of Knoxville, Tennessee, held November 24, 1959, which relates to the adoption of Resolution No. 2690, "A Resolution Authorizing the Mayor of the City of Knoxville to Intervene and Participate in the Case of Baker, et al. vs. Carr, et al., Pending in the United States District Court for the Middle District of Tennessee, and Having as its Object the Reapportionment of the General Assembly of Tennessee", on first and final reading, as the same appears of record in Minute Book No. 27, under date of November 24, 1959, in my office.

Witness my hand and the official seal of said City this 27th day of November, 1959.

Nessie M. Beeler, Recorder, City of Knoxville, Tennessee.

[fol. 334]

ATTACHMENT TO PETITION

RESOLUTION NO. 2690

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF KNOXVILLE TO INTERVENE AND PARTICIPATE IN THE CASE OF BAKER, ET AL. VS. CARR, ET AL., PENDING IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, AND HAVING AS ITS OBJECT THE REAPPORTIONMENT OF THE GENERAL ASSEMBLY OF TENNESSEE.

WHEREAS, no Act of Apportionment of the General Assembly of Tennessee has been enacted since 1901 A.D., despite the requirements of the Constitution of Tennessee

that the General Assembly be apportioned among the qualified voters of the State equally at ten-year intervals, and

WHEREAS, the Apportionment Act of 1901 worked to deprive Knox County and the citizens of Knoxville, Tennessee, of a portion of the representation previously had by it, although the qualified voters of this community were then entitled to increased representation in the General Assembly and the almost sixty years which have passed have worked to further debase the electoral franchise had by the citizens of Knoxville and Knox County, Tennessee, in that the population of this community has steadily increased, and

WHEREAS, representation in the General Assembly is now so grossly unequal that in some instances voters of one County have many times the representation as is had by the voters and citizens of Knoxville, Knox County, Tennessee, whereby the citizens and voters of this County and others similarly situated are deprived of the equal protection of the laws, and

WHEREAS, the debasement of the right to vote had by the people of Knoxville, Tennessee, and other areas in Tennessee similarly situated, is such that said Apportionment Act of 1901 now requires that less than 40% of the people of Tennessee elect 66⅔% of the House of Representatives, while one-third of the people of Tennessee elect two-thirds of the State Senate, and said Act prohibits the election of a General Assembly representative of a majority of the people of Tennessee, and, is, therefore, wholly unfair, [fol. 335] undemocratic and absolutely unconstitutional, and

WHEREAS, that unlawfully constituted majority of the General Assembly has exercised its unconstitutional authority over the citizens of Knoxville and other areas similarly situated, by requiring an unequal sharing in the cost of government of Tennessee, and

WHEREAS, there is no apparent relief in sight from the taxation without representation presently existing in Tennessee, and the disproportionate expense of government now borne by the citizens of Knoxville will in all probability be increased unless some relief is found, and

WHEREAS, the people of the City of Knoxville are deprived of any political remedy, in that they are not permitted vote for or against the absolute majority of the General Assembly apportioned to the over-represented areas of the State of Tennessee, and

WHEREAS, a group of City and County officials and individual citizens of Tennessee have sought relief in the United States District Court at Nashville, in the case of Baker, et al., vs. Carr, et al., and in their case seek a declaration of the invalidity of the Apportionment Act of 1901 and a reapportionment of the General Assembly of the State of Tennessee, and

WHEREAS, the people of Knoxville and Knox County, Tennessee, would benefit financially and would with all others in Tennessee benefit by an enforced respect for an observance of the Supreme organic law of Tennessee, and it is in the best interest of the City of Knoxville that the cause of the people of the City of Knoxville be presented to that three Judge District Court assigned and established for the trial of said case.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE [fol. 336] CITY OF KNOXVILLE:

SECTION 1: That the Mayor of the City of Knoxville be and he is hereby authorized to intervene and participate in said case in the United States District Court, Baker et al., v. Carr, et al., and to take any and all necessary steps in proving the long continued mistreatment of the people of the City of Knoxville at the hands of the unlawfully apportioned General Assemblies of Tennessee convened pursuant to the Apportionment Act of 1901.

SECTION 2: BE IT FURTHER RESOLVED, That this resolution shall take effect from and after its adoption, the welfare of the City requiring it.

/s/ JOHN J. DUNCAN
Presiding Officer of the Council

/s/ NESSIE M. BEELER
Recorder

[fol. 336a]

EXHIBIT I TO PETITION

INSTRUCTIONS

To

ELECTION OFFICIALS

AND

WATCHERS

General Provisions of the Law

Title 2

[fol. 337] ELECTION LAWS

The following laws relating to elections are taken verbatim from the TENNESSEE CODE ANNOTATED, enacted as Chapter 6 of the Public Acts of Tennessee for 1955:

CHAPTER 2

QUALIFICATION OF ELECTORS

TCA 2-202 RESIDENCE REQUIREMENTS—PENALTY FOR IMPROPER VOTING.—All voters shall be required to vote in the civil district, ward or precinct where they may reside, except as otherwise provided in this Code. Any person violating this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty dollars ($20.00) nor more than fifty dollars ($50.00). (Acts 1869-1870, Ch. 22, Sec. 1; 1870, Ch. 10, Sec. 4; Shan., Secs. 1168, 6860; mod. Code 1932, Secs. 1938, 11329.)

CHAPTER 11

OFFICERS OF ELECTIONS

TCA 2-1101 OFFICIALS CONDUCTING ELECTIONS —VACANCIES ON BOARD-FILLING.—All elections shall be opened and held by the officers, judges, and clerks of elections, appointed by the commissioners of elections, according to law, and if any of said officers, judges, or clerks

shall fail to attend, other persons shall be selected to fill such vacancy by a majority of the election officers in attendance. (Code 1858, Sec. 839 (deriv. Acts 1835-1836, Ch. 2, Sec. 1); Acts 1870, Ch. 23, Sec. 9; impl. am. Acts 1907, Ch. 436, Secs. 9-11, 14; Shan., Secs. 1157, 1178; Code 1932, Secs. 1918, 1947.)

TCA 2-1102 ELECTION OFFICIALS ABSENTING SELVES—FILLING VACANCIES—QUALIFICATIONS OF PERSONS SELECTED.—When, for any reason, any judge, clerk or officer of election, so appointed, fails to attend promptly, and by reason of his absence at the hour, opening of the polls is delayed or about to be, other persons shall be selected to fill such vacancies by a majority of the election officials duly appointed and attending, but the persons so selected shall be residents and citizens of the ward, district or precinct for which they are to serve and shall act only until the regularly appointed officials, in whose stead they were selected, appear and demand that they be allowed to serve. Then, the persons so selected shall cease to act. Any person selected to fill such vacancy shall, also, be of the same political party as the person in whose stead he was selected. (Acts 1907, Ch. 436, Sec. 14; Shan., [fol. 338] Sec. 1188a37; mod. Code 1932, Sec. 1949.)

TCA 2-1103 VACANCIES—FILLING WHEN NO ELECTION OFFICIALS PRESENT.—If all the election officers, whose duty it is to attend at a particular place of voting under the law, fail to attend, any justice of the peace present, or, if no justice of the peace be present, any three (3) freeholders may perform the duties of appointing the inspectors or judges, or, in case of necessity, may act as officers or inspectors. (Code 1858, Sec. 843; impl. am. Acts 1907, Ch. 436; Shan., Sec. 1184; Code 1932, Sec. 1950.)

TCA 2-1104 OATH OF JUDGES.—The officer or person holding any election, or some justice of the peace, before the opening of the polls, shall administer to the judges appointed to hold the election the following oath: "You do solemnly swear that, as judge of this election, you will suffer no one to vote, whom you know, of your own knowledge, or who appears, either by his own oath or by the

testimony of others, not to be a qualified voter; that you will not suffer the ballot box to be out of the presence or sight of at least two of your number until every vote is counted out; that you will faithfully and impartially conduct yourselves as judges of this election; and that you will, in all respects, perform the duties imposed upon you by law as judges and inspectors of this election. So help you God." (Code 1858, Sec. 844 (deriv. Acts 1841-1852, Ch. 31, Sec. 5); Acts 1879, Ch. 181, Sec. 1; Shan., Sec. 1185; Code 1932, Sec. 1951.)

TCA 2-1105 OATH OF CLERK OF ELECTION.—The clerks of the different elections shall take the following oath: "You do solemnly swear that you will faithfully, truly, and impartially discharge your duty as clerks of this election. So help you God." Which oath shall be administered by the person administering the oath of office to the judges or inspectors of the election, or by one of the judges themselves. (Code 1858, Sec. 845 (deriv. Acts 1841-1842, Ch. 31, Sec. 11); Shan., Sec. 1186; Code 1932, Sec. 1952.)

TCA 2-1108 APPOINTMENT OF ELECTION OFFICIALS ANNOUNCED BY NEWSPAPER PUBLICATION.—It shall be the duty of said commissioners, within fifteen (15) days prior to any election held within the county for which they are appointed, to appoint and announce by publication in a newspaper of the county, if there shall be one, the appointment of one (1) officer, three (3) judges and two (2) clerks for each and every voting place in their county to superintend the election in the precinct or voting place for which said officers, judges and clerks [fol. 339] shall be appointed. (Acts 1907, Ch. 436, Sec. 9; 1909, Ch. 104, Sec. 1; Shan., Sec. 1188a24; impl. am. Acts 1919, Ch. 45, Sec. 1; Code 1932, Sec. 1977; Acts 1939, Ch. 53, Sec. 3; C Supp. 1950, Sec. 1977.)

TCA 2-1110 WATCHERS FOR EACH VOTING PLACE — APPOINTMENT — RIGHTS AND PRIVILEGES.—Two (2) watchers representing the majority party in the state and two (2) watchers representing the minority party in the state may be appointed at each precinct or voting place, and one of the watchers representing the majority party shall be appointed only by the chairman

of the county executive committee of the majority party in the state and the other by a majority of the candidates of the majority party running exclusively within the county in which the watchers are to be appointed, and the watchers representing the minority party shall be in like manner appointed, one by the chairman of the county executive committee of the minority party in the state and the other by a majority of the candidates of the minority party running exclusively within the county in which the watcher is to be appointed, and in case such candidates of either party fail to appoint the watchers two (2) whole days prior to the election, the chairman of the county executive committee representing the party whose candidates failed to appoint such watcher shall appoint both watchers representing his party. The appointment of said watchers shall be made in writing and signed by the parties authorized to make the appointment and presented to the judges holding the election, and said watchers shall have full access to the polling places during the time the votes are being polled and counted, and the right to inspect all ballots while being called and counted and all tally sheets and poll lists during preparation and certification thereof, but they shall not in any way interfere with any voter in the preparation or casting of his ballot, or the judges, officers, or clerks in the performance of their respective duties in the holding of the elections. (Acts 1907, Ch. 436, Sec. 9; 1909, Ch. 104, Sec. 1; Shan., Sec. 1188a27; Code 1932, Sec. 1979.)

TCA 2-1111 CLERKS OF ELECTION—APPOINTMENT.—If competent persons of different political parties are willing to serve, they shall be appointed from the two (2) political parties most numerously represented at such precinct or voting place. (Acts 1907, Ch. 436, Sec. 10; 1909, Ch. 104, Sec. 2; Shan., Sec. 1188a29; Code 1932, Sec. 1981.)

TCA 2-1112 APPOINTMENT OF CLERKS BY COMMISSIONERS REPRESENTING DIFFERENT PAR- [fol. 340] TIES.—One of said clerks shall be appointed by the members of the commissioners of elections representing the majority party, and the other clerk shall be appointed by the member of the commissioners of elections representing the minority party in the state. (Acts 1907, Ch. 436,

Sec. 10; 1909, Ch. 104, Sec. 2; Shan., Sec. 1188a30; Code 1932, Sec. 1982.)

TCA 2-1113 "MINORITY PARTY" DEFINED.—By minority party is meant the party polling in the state the second highest number of votes for presidential electors at the presidential election immediately preceding the appointment of officers under this chapter. (Acts 1907, Ch. 436, Sec. 10; 1909, Ch. 104, Sec. 2; Shan., Sec. 1188a31; Code 1932, Sec. 1983.)

TCA 2-1116 NONAPPEARANCE OF APPOINTEE A MISDEMEANOR—DEFENSES.—Any person so notified of his appointment who fails to appear at the time and place designated in said notice, and discharge the duties of the office to which he has been appointed, shall be guilty of a misdemeanor and be fined not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00). But it shall be a good defense to show to the satisfaction of the court that on the date fixed for said election, the state of his own health, or that of some member of his family was such as to require his absence from said election, or that some pressing or urgent business engagement, the neglect of which would cause irreparable loss, or that the public service would have been materially injured. Any false statement under oath, knowingly made as to the existence of either of these defenses, shall constitute the offense of perjury. (Acts 1919, Ch. 45, Sec. 1; Shan. Supp., Sec. 1188a34b2; mod. Code 1932, Sec. 1987.)

TCA 2-1117 NOTICE GIVEN OF NONAPPEARANCE OF APPOINTEES—PROSECUTION.—It shall be the duty of the officers present and holding the election, to certify to the chairman of the commissioners of elections of the county, the names of those who fail to appear at the time and place named in said notices and discharge the duties of the office to which they have been appointed. And it shall be the duty of the chairman to furnish the first grand jury sitting in the county after the date of holding such election, the names of the delinquent officials, provided, however, that should such delinquent official, on or before the convening of such grand jury, file with said chairman his affidavit, as provided in Sec. 2-1116, it shall be the duty

of said chairman to file such affidavit together with his [fol. 341] recommendation in the premises, with the grand jury and upon the receipt of which it may then determine whether or not it will exercise its inquisitorial power as to such case. (Acts 1919, Ch. 45, Sec. 2; Shan. Supp., Sec. 1188a34b3; mod. Code 1932, Sec. 1988; impl. am. Acts 1953, Ch. 88, Sec. 11.)

TCA 2-1118 JUDGES AND CLERKS APPOINTED FROM TWO PARTIES MOST NUMEROUSLY REPRESENTED.—The commissioners of elections in appointing judges and clerks in all elections shall give bona fide representation to each of the two (2) parties most numerously represented in the ward, district, or precinct for which they are appointed. (Acts 1907, Ch. 436, Sec. 12; Shan., Sec. 1188a35; Code 1932, Sec. 1989.)

TCA 2-1120 GOVERNMENT OFFICERS OR EMPLOYEES PROHIBITED FROM SERVING AS PRIMARY ELECTION OFFICIALS.—No state, county, municipal, or federal government officer or employee, including the deputy or employees of such officer or employee, whether elected or appointed, shall serve as a member of any primary election board, or as an officer, judge, clerk or registrar in any primary election, nor shall any candidate to be voted on in any primary election be eligible to serve on a primary election, provided, however, that the offices of justices of the peace, notary public, and school teacher shall not be considered officers and employees within the purview of Secs. 2-1120, 2-1121. (Acts 1951, Ch. 260, Sec. 1 (Williams, Sec. 2227.32a).)

Chapter 12

DORTCH BALLOT LAW

TCA 2-1208 VOTER UNABLE TO WRITE FURNISHED PASTE-IN SLIPS.—If said voter cannot write, he may receive from the officer holding the election a slip upon which the name of the candidate to be voted for is printed, and such slip shall be pasted in the appropriate blank space by the voter. The candidate to be voted for shall furnish the officer holding the election with said slips.

(Acts 1890 (1st E.S.), Ch. 24, Sec. 3; Shan., Sec. 1236; Code 1932, Sec. 2049.)

TCA 2-1218 REGULATIONS FOR VOTING—BALLOT AND INSTRUCTION CARD FURNISHED.—The registrar having the official ballots shall stand not closer than ten (10) feet to the entrance of the room in which the ballot box is placed. A double gangway, with rail guards, may run from the point occupied by the registrar to the said entrance, and no one who has already voted, or who is not ready or qualified to vote, shall come nearer than [fol. 342] fifty (50) feet to said rail guard or entrance. As requested by each of the voters, the registrar shall hand the voter one official ballot and a card of instructions, but so that not more voters than there are voting compartments shall be admitted into the room in which are ballot boxes and the compartments, tables, or shelves. (Acts 1890 (1st E.S.), Ch. 24, Sec. 13; Shan., Sec. 1246; Code 1932, Sec. 2059.)

TCA 2-1219 BALLOT AND CERTIFICATE OF REGISTRATION TO BE NUMBERED.—Upon receipt of his ballot, the voter shall forthwith enter the room in which the voting is to take place, and present to the assistant registrar his blank ballot and certificate of registration, provided, the registrar shall, upon demand of any voter made at the time his ballot is handed to him, give to such voter a correct statement of the order in which the title of the various offices to be filled stand upon the particular ballot furnished to such voter. The assistant registrar shall then number the ballot upon the stub thereof, and also place upon the certificate of registration the same number. (Acts 1890 (1st E.S.), Ch. 24, Sec. 14; Shan., Sec. 1247; Code 1932, Sec. 2060.)

TCA 2-1220 MARKING BALLOT.—The voter shall then go to one of the voting shelves, tables, or compartments, and shall prepare his ballot by marking in the appropriate margin or place a cross (x) opposite the name of the candidate of his choice for each office to be filled, or by filling in the name of the candidate of his choice in the blank space provided therefor, and marking a cross (x) opposite thereto, and likewise a cross opposite the answer

he desires to give in case of a constitutional amendment or other proposition. (Acts 1890 (1st E.S.), Ch. 24, Sec. 14; Shan., Sec. 1248; Code 1932, Sec. 2061.)

TCA 2-1221 FOLDING AND PRESENTATION OF BALLOT—STUB TORN OFF AND DESTROYED.—Before leaving the voting shelf or compartment, the voter shall fold his ballot, without displaying the marks thereon, but so that the words "Official ballot for," followed by the designation of the polling place for which the ballot is prepared, the date of the election, and the facsimile of the signatures of the commissioners of election, and the numbered stub shall be plainly visible to the officers of election, and shall present to said officers his certificate of registration and marked ballot, and if the numbers on each correspond, the officer of election shall tear off and destroy said stub at once. (Acts 1890 (1st E.S.), Ch. 24, Sec. 14; impl. am. Acts 1907, Ch. 436, Sec. 19; Shan., Sec. 1249; Code 1932, Sec. 2062.)

[fol. 343] TCA 2-1222 REPEATING TO BE PREVENTED.—To prevent repeating by voters, Sec. 2-315 shall be complied with. (Acts 1890 (1st E.S.), Ch. 24, Sec. 14: Shan., Sec. 1250; mod. Code 1932, Sec. 2063.)

TCA 2-1223 MANNER OF VOTING—TIME LIMIT.—The voter shall then vote in the manner provided by law He shall mark and deposit his ballot, without undue delay and shall quit said inclosed space or room as soon as he has voted. No such voter shall be allowed to occupy a voting shelf, table, or compartment already occupied by another, nor longer than ten (10) minutes if other voters are not waiting, nor longer than five (5) minutes in case other voters are waiting. (Acts 1890 (1st E.S.), Ch. 24, Sec. 14; Shan., Sec. 1251; Code 1932, Sec. 2064.)

TCA 2-1224 PERSONS ALLOWED IN VOTING ROOM —PEACE OFFICER, DUTIES.—No person shall be allowed in the room in which said ballot box and compartments are, except the officers of election and those appointed by the officer holding the election, and none other, to secure the observance of the provisions of this chapter. In the case of cities having duly enrolled policemen or peace officers,

the city authorities may designate the officers to keep the peace at the polls on the outside of the room in which is the ballot box, and not closer than ten (10) feet to the entrance or outer rail guard, if there be such, leading to said room. But in no event shall said policemen or peace officers come nearer to said entrance than ten (10) feet, or enter the room in which is the ballot box, unless specially requested to do so by the officer holding the election, and at any time when requested to do so by said officer holding the election, the said policeman or policemen shall retire from the room in which is the ballot box, and to a point not nearer than ten (10) feet to the aforesaid entrance or rail guard. (Acts. 1890 (1st E.S.), Ch. 24, Sec. 14; Shan., Sec. 1252; Code 1932, Sec. 2065.)

TCA 2-1226 ASSISTANCE TO PHYSICALLY DISABLED VOTERS.—Any voter who declares to the officer holding the election, that, by reason of blindness or other physical disability, he is unable to mark his ballot, shall upon request, receive the assistance of the officer holding the election in the marking thereof, and such officer shall certify on the outside that it was so marked with his assistance, and shall give no information in regard to the same. Provided that any person who is unable to mark his ballot by virtue of total blindness may have any reputable person of his selection mark the same. (Acts 1890 (1st E.S.), Ch. 24; Sec. 16; Shan., Sec. 1254; Code 1932, Sec. [fol. 344] 2067; Acts 1937, Ch. 126, Sec. 1; 1949, Ch. 274, Secs. 1-3; C. Supp. 1950, Sec. 2067; Acts 1951, Ch. 232, Sec. 1.)

TCA 2-1227 IMPROPERLY MARKED BALLOTS.—If the voter marks more names than there are persons to be elected to an office, or if for any reason it is impossible to determine the voter's choice for any office to be filled, his ballot shall not be counted for such office. But this shall not vitiate the ballot so far as properly marked. No ballot without the official indorsement of the chairman of the board of commissioners shall be deposited, and none but ballots provided in accordance with the provisions of this chapter shall be counted. (Acts 1890 (1st E.S.), Ch. 24, Sec. 17; Shan., Sec. 1255; Code 1932, Sec. 2068.)

TCA 2-1228 OFFENSES COMMITTED IN VOTING PENALIZED—REJECTION OF BALLOTS.—A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person, or who shall take or remove, or attempt to take or remove, any ballot from the polling place, before the close of the polls, or who shall make a false statement as to his inability to mark his ballot, or place any mark upon his ballot by which it may be afterward identified as the one voted by him, or any person who shall interfere, or attempt to interfere, with any voter when inside said inclosed space, or when marking his ballot, or who shall remain longer than the specified time allowed by this chapter in the booth after being notified that his time has expired, or who shall endeavor to induce any voter, before voting, to show how he marks or has marked his ballot, or aid, or attempt to aid, any voter, by means of any mechanical device, or any other means whatever, in marking his ballot, shall be punished by fine not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00); and election officers shall cause any person so doing to be arrested and treated as one caught in the act of committing a misdemeanor; and any ballot marked by the voter for identification shall be rejected. (Acts 1890 (1st E.S.), Ch. 24, Sec. 18; Shan., Sec. 1256; Code 1932, Sec. 2069.)

TCA 2-1229 REFUSAL OR FAILURE BY ELECTION OFFICIALS TO PERFORM DUTIES A MISDEMEANOR—PENALTY.—Any commissioner of elections or registrar who willfully and knowingly refuses or fails to perform the duties herein prescribed shall be guilty of a misdemeanor, and subject to a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), and to imprisonment in the county jail not less than ten (10) nor more than ninety (90) days, in the discretion of the court. Any officer of election who violates, willfully and knowingly, any of the provisions of this [fol. 345] chapter shall be subject to a fine of not less than fifty dollars ($50.00) and not more than two hundred dollars ($200.00), and to imprisonment in the county jail not exceeding three (3) months, in the discretion of the court. Any officer of election whose duty it is to hold the elections provided for, who willfully neglects, fails, or refuses to

open and hold said elections, in accordance with the requirements herein made, shall be guilty of a misdemeanor in office, and be subject to a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000.00), and shall be removed from office, and in event the officer of election of any county neglects, fails, or refuses to hold the election provided for, the duties, responsibilities, and authority of such officer shall devolve upon the chairman of the commissioners of elections, who shall exercise, for the time being, the functions of said officer in holding that election. Acts 1890 (1st E.S.), Ch. 24, Sec. 19; impl. am. Acts 1907, Ch. 436, Secs. 1, 9-11, 19; Shan., Sec. 1257; Code 1932, Sec. 2070.)

Chapter 13

PROCEDURE IN VOTING PLACE—COUNTING OF BALLOTS

TCA 2-1301 HOURS OF ELECTION.—In all elections for electors for president and vice-president of the United States, governor, members of congress, members of the state legislature, judges of the supreme, appeals, chancery, and circuit courts, judges of the county court in those counties where county judges are elected, sheriffs, clerks of the circuit and county courts, registers, trustees, justices of the peace, constables, and district attorneys for the various judicial districts, the polls shall be opened at 9:00 a.m. and shall remain open continuously until 4:00 p.m. at which time they shall be closed, except in cities having a population of fifteen thousand (15,000) and over according to the federal census of 1950 or any subsequent federal census, in which cities the polls shall be opened at 9:00 a.m. and closed at 7:00 p.m., and the commissioners of election in any county may order polls in any heavily populated voting precinct suburban to such city to remain open until 7:00 p.m.

Provided, however, that the commissioners of election of any county may determine, subject to the approval of the county court of such county, the hours when the polls shall be opened and closed at the several precincts within said counties. Provided further, that in no event shall the polls in any precinct be kept open for a less number of hours

than they were at the last general election before April 10, [fol. 346] 1953, and in no event for less than seven (7) hours, between the hours of 8:00 a.m. and 9:00 p.m.

Provided however, that the hours shall be set at least fifteen (15) days before the date of the election. (Acts 1859-1860, Ch. 75; 1909, Ch. 156, Sec. 1; Shan., Sec. 1282; mod. Code 1932, Sec. 2090; mod. C. Supp. 1950, Sec. 2090; Acts 1953, Ch. 266, Sec. 1.)

TCA 2-1304 "BALLOT BOX" DEFINED.—The ballot box is any receptacle provided by the officer or person holding an election for receiving the ballots, which box is to be kept locked, or otherwise well secured, until the election is finished. (Code 1858, Sec. 848 (deriv. Acts 1796 (Mar.), Ch. 9, Sec. 2); Shan., Sec. 1266; Code 1932, Sec. 2074.)

TCA 2-1305 METAL BALLOT BOXES TO BE FURNISHED—LOCKED DURING VOTING.—In all elections, both general and primary, held in the state of Tennessee for any state, county, municipal or federal office the election official shall be required to furnish for the voters, and the votes shall be placed in, standard metal boxes provided with good and sufficient locks except where voting is done by the use of voting machines. Said standard metal boxes shall be of such dimensions as may be prescribed by the body charged with conducting said election, and the type lock to be used shall be prescribed by the body conducting said election in each county of this state. All such metal boxes shall be locked on the date of election prior to any ballot being placed in same by the precinct official charged with the conducting of said election and shall remain locked throughout the period while ballots may be cast and shall not be opened until the count of the votes is commenced. The state of Tennessee shall bear the cost of providing the ballot boxes required by this section. (Acts 1949, Ch. 217, Sec. 1; C. Supp. 1950, Sec. 2074.1.)

TCA 2-1306 BALLOT BOXES—VIOLATIONS RESPECTING—PENALTY.—Any person who violates any provision of Sec. 2-1305 shall upon conviction thereof be fined not more than one thousand dollars ($1,000.00) or imprisoned not more than one (1) year and one (1) day, or both, in the discretion of the jury. (Acts 1949, Ch. 217, Sec. 1; C. Supp. 1950, Sec. 2074.2.)

TCA 2-1307 DELIVERY OF BALLOT TO OFFICIAL BY VOTER.—Every person qualified to vote, in the manner directed by the Constitution, who shall attend for that purpose at any election, shall give to the returning officer, in presence of the inspectors or judges, a ballot to be put [fol. 347] into the box. (Code 1858, Sec. 849 (deriv. Acts 1796 (Mar.), Ch. 9, Sec. 3); Shan., Sec. 1267; Code 1932, Sec. 2075.)

TCA 2-1308 BALLOT RECEIVED AND PLACED IN BOX WITHOUT EXAMINATION.—The returning officer shall receive the ballot in the presence of the judges, and, if the right of the person presenting it to vote is unquestioned, he shall not open and examine, or read the ballot at the time of receiving it, and before he puts it in the box. (Code 1858, Sec. 850 (deriv. Acts 1796 (Mar.), Ch. 9, Sec. 2; 1831, Ch. 98, Sec. 1); impl. am. Acts 1907, Ch. 436, Secs. 11, 14; Shan., Sec. 1268; Code 1932, Sec. 2076.)

TCA 2-1309 OATH OF CHALLENGED VOTER.—If any person offer to vote, and none of the judges knows that he is a qualified voter, or if his vote is objected to by any candidate or other citizen of this state, the judges of the election, or some one of them, or the officer or person holding the election, may, under the direction of the judges, or a majority of them, administer an oath in the following form, or to the following effect: "You do solemnly swear or affirm that you will true answers make to such questions as may be asked you touching your qualifications, or right to vote in the present election. So help you God." (Code 1858, Sec. 852 (deriv. Acts 1841-1842, Ch. 31, Sec. 6); Shan., Sec. 1270; Code 1932, Sec. 2078.)

TCA 2-1310 QUESTIONING CHALLENGED VOTER —TESTIMONY OF BYSTANDERS.—The judges, or some of them, shall then ask the person offering to vote the following questions: Are you a citizen of the state of Tennessee? Are you twenty-one (21) years of age? Do you reside in this county? Has your home been in this county six (6) months (next) before this day (the day of holding the election)? Have you voted at any other time or place in this election? And any other questions the judges may think material to ascertain the qualification of the person offering

to vote. And if they, or any one of them, have reason to suspect that the person offering to vote has sworn falsely, they, or the officer, or some justice of the peace under their direction, may swear any bystander as to the right and qualification of such person to vote. (Code 1858, Sec. 853 (deriv. Acts 1841-1842, Ch. 31, Sec. 6); Shan., Sec. 1271; Code 1932, Sec. 2079.)

TCA 2-1311 RECEIVING VOTE OF CHALLENGED VOTER.—The said questions having been asked and answered, and the testimony of bystanders taken if desired, if the judges or a majority of them are satisfied that the person offering to vote is a citizen of this state, that he is [fol. 348] twenty-one (21) years of age, that he has had his home in the county in which he offers to vote six (6) months next preceding, that he has not voted before at the same election, and that he is otherwise qualified, the judges shall thereupon receive his vote. (Code 1858, Sec. 854 (deriv. Acts 1841-1842, Ch. 31, Sec. 6); Shan., Sec. 1272; Code 1932, Sec. 2080.)

TCA 2-1316 LISTING VOTERS UPON CALLING OF NAMES.—When the officer receives the ballot, he shall call the name of the voter, in a distinct voice, and the clerks of the election shall take down, on separate lists or books, the name of every person voting, and shall attest the correctness of them under their hands. (Code 1858, Sec. 859 (deriv. Acts 1796 (Mar.), Ch. 9, Sec. 3; 1841-1842, Ch. 31, Sec. 11); Shan., Sec. 1277; Code 1932, Sec. 2085.)

TCA 2-1317 COUNTING OF VOTES AFTER CLOSING OF POLLS.—The officer or person and judges appointed to hold an election shall not proceed to or commence counting out the votes given in the election, until the polls shall have been closed. (Code 1858, Sec. 860 (deriv. Acts 1796 (Mar.), Ch. 9, Sec. 3); Shan., Sec. 1278; Code 1932, Sec. 2086.)

TCA 2-1318 READING OFF VOTES AND NUMBERING BALLOTS.—When the election is finished, the returning officer and judges shall, in the presence of such of the electors as may choose to attend, open the box and read aloud the names of the persons which shall appear in

each ballot, and the clerks, at the same time, shall number the ballots, each clerk separately. (Code 1858, Sec. 861 (deriv. Acts 1796 (Mar.), Ch. 9, Sec. 3); Shan., Sec. 1279; Code 1932, Sec. 2087.)

TCA 2-1319 TICKETS ROLLED TOGETHER VOID.—If there be two (2) tickets rolled up together, such ticket shall not be numbered in taking the ballots, but shall be adjudged void. (Code 1858, Sec. 862 (deriv. Acts 1796 (Mar.), Ch. 9, Sec. 3); Shan., Sec. 1286; Code 1932, Sec. 2088.)

TCA 2-1320 REMOVAL OF BALLOT BOX PROHIBITED.—It shall be unlawful for the election officers or any other person to remove the ballot box used in any general or primary election from the place where such election is held, from the opening of the polls for such election or primary until the votes cast therein have been duly counted and tabulated. (Acts 1947, Ch. 157, Sec. 1; C. Supp. 1950, Sec. 2090.1.)

TCA 2-1321 BLANK SPACES ON POLL BOOKS OR TALLY SHEETS CANCELED BY CLERK.—Each clerk [fol. 349] of election shall at the completion of the counting of the votes cast in any election or primary cancel all vacant or blank spaces upon the poll books and/or tally sheets used therein in such manner as that no additional names may be written therein. (Acts 1947, Ch. 157, Sec. 2; C. Supp. 1950, Sec. 2090.2.)

TCA 2-1322 PENALTY FOR VIOLATIONS OF SECTIONS 2-1320 AND 2-1321.—Any person violating any of the provisions of Secs. 2-1320, 2-1321 shall be guilty of a misdemeanor and punishable accordingly. (Acts 1947, Ch. 157, Sec. 3; C. Supp. 1950, Sec. 2090.3.)

TCA 2-1323 INSPECTORS—POWERS OF PEACE OFFICER.—The inspectors have authority to maintain regularity and order in the balloting; to keep access to the polls free and unobstructed; to prevent all disorderly and riotous conduct during the election, and during the counting of the votes, after the polls are closed; and, for this purpose, they are vested with all the power of a peace officer. (Code 1858, Sec. 863; Shan., Sec. 1281; Code 1932, Sec. 2089.)

Chapter 14

COMPARISON OF POLLS AND RETURNS

TCA 2-1403 FAILURE TO DELIVER ELECTION RETURNS—PUNISHMENT.—Any election officer who fails, or refuses, or willfully neglects to deliver the returns from his precinct to the county election commissioners within the time required by Sec. 2-1402, shall be guilty of a misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) and not more than one thousand dollars ($1,000.00) and sixty (60) days imprisonment, within the discretion of the court. (Acts 1949, Ch. 215, Sec. 2; C. Supp. 1950, Sec. 1991.1 (Williams, Sec. 1991.2.)

TCA 2-1426 POLL BOOKS—PRESERVATION AND CERTIFICATION.—The judges at every election shall preserve the poll books, or lists of the names of voters, kept by the respective clerks; and said judges, or a majority of them, shall certify that the same do contain a true list of the voters at the respective places of holding elections, which certificate shall be attested by the clerks and officer or person holding the election. (Code 1858, Sec. 867 (deriv. Acts 1841-1842, Ch. 31, Sec. 10); Shan. Sec. 1287; Code 1932, Sec. 2094.)

TCA 2-1427 POLL BOOKS ARE RECORDS—RECEIVED IN EVIDENCE.—Said books or lists, or copies of them, certified by the officer having custody of them, shall [fol. 350] be records, and be received as evidence in any case arising out of said election, subject to be impeached, however, by other evidence. (Code 1858, Sec. 869 (deriv. Acts 1841-1842, Ch. 31, Sec. 10); Shan., Sec. 1289; mod. Code 1932, Sec. 2095.)

Chapter 15

VOTING MACHINES

TCA 2-1501 DEFINITIONS.—1. The word "ballot" or "ballot labels" as used in this chapter shall be defined as that portion of the cardboard, paper or other material, within the ballot frames, containing the names of the candidates, party designation or a statement of a proposed

constitutional amendment or other question or proposition, with the word "yes" for voting for any question or the word "no" for voting against any question.

2. The term "question" means a statement of any constitutional amendment, proposition or other question appearing on the machine and to be submitted to the voters at any election.

3. The term "irregular ballot" means the vote cast for, or on a special device for, a person whose name does not appear on the ballot labels.

4. The term "protective counter" means the separate counter built into the voting machine which cannot be reset, and which records the total number of movements of the operating lever.

5. The term "public counter" means the counter, visible from the outside of the machine, which shows during any period of voting the total number of voters who have operated the machine during said period of voting. (Acts 1937, Ch. 159, Sec. 29; C. Supp. 1950, Sec. 2111.1 (Williams, Sec. 2111.29).)

TCA 2-1502 SPECIFICATIONS OF VOTING MACHINE.—A voting machine to be used in Tennessee must be so constructed as to provide facilities for voting for candidates at both primary and general elections or at a non-partisan election and also at a combination of non-partisan and partisan primary or general election. It must permit a voter to vote for any person for any office whether or not nominated as a candidate by a party or organization. It must insure voting in absolute secrecy. It must permit a voter to vote for any candidate or on any special measure for whom or on which he is lawfully entitled to vote but none other. It must permit a voter to vote for the proper number of candidates for an office but no more. It must prevent the voter from voting for the same person twice. [fol. 351] It must be provided with a lock or locks by which immediately after the polls are closed any movement of the voting or registering mechanism can be absolutely prevented. (Acts 1937, Ch. 159, Sec. 1; C. Supp. 1950, Sec. 2111.2 (Williams, Sec. 2111.1.).)

TCA 2-1507 FORM OF BALLOTS ON VOTING MACHINES.—All ballots (or ballot labels) shall be printed in black ink on clear, white material of such size as will fit the ballot frame and in as plain, clear type as the space will reasonably permit. The party name for each political party represented on the machine shall be prefixed to the list of candidates of such parties. The titles of offices may be arranged horizontally with the names of the candidates arranged vertically under the title of the office, or the titles of the offices may be arranged vertically with the names of the candidates arranged horizontally opposite the respective titles and each office shall as nearly as the construction of the machine permits occupy as many columns or rows on the machine as equals the number of candidates to be nominated or elected to that office. The arrangement of the names of the candidates and the offices shall be as uniform as practicable and if not specifically provided for herein, the names of the candidates shall be so arranged as to comply with all requirements of the election law governing the use of paper ballots. The machine shall be so adjusted that when one (1) or more voting pointers equalling the total number of persons to be elected to that office shall have been operated all other voting pointers connected with that office shall be thereby locked. (Acts 1937, Ch. 159, Sec. 6; C. Supp. 1950, Sec. 2111.7 (Williams, Sec. 2111.6).)

TCA 2-1508 SAMPLE BALLOTS.—The authorities charged with the duty of providing ballots for any polling place where voting machines are used shall provide therefor two (2) sample ballots which shall be arranged in the form of a diagram showing such part of the face of the voting machine as shall be in use at that election. Such sample ballots shall be either in full or reduced size and shall contain suitable illustrated directions for voting on the voting machine. Such sample ballots shall be open to public inspection at such polling place during election day. At all elections where voting machines are used there may be mailed to each registered voter such sample ballot of a reduced size at least three (3) days prior to the election or in lieu thereof a copy of such sample ballot may be published at least three (3) days preceding the election in the

local newspaper. (Acts 1937, Ch. 159, Sec. 7; C. Supp. 1950, Sec. 2111.8 (Williams, Sec. 2111.7).)

[fol. 352] TCA 2-1509 PREPARATION OF MACHINES FOR ELECTION.—It shall be the duty of the commissioners of elections or other authority in direct charge of elections in every city, county, and town where voting machines are to be used to cause the proper ballot labels to be placed on the voting machines and to place said machines in proper order for voting. Further, said authorities shall examine all voting machines before they are sent out to the different polling places, to see that all the registering counters are set at zero (000), to lock all voting machines so that the counting mechanism cannot be operated and to seal each one with a numbered metal seal.

Before preparing the voting machines for any election written notices shall be mailed to the chairmen of the county committees of the different political parties stating the times when and place or places where the machines will be prepared, at which times and place or places one representative of each of such political parties designated by the respective chairmen of the county committees of such parties shall be entitled to be present and see that the machines are properly prepared and placed in proper condition and order for use at the election. When the machines have been prepared for election it shall be the duty of the custodians, hereinafter provided for, and the party representatives, to make a certificate in writing which shall be filed in the office of the commissioners of elections or other authority in charge of elections, stating the number of machines, whether or not all of the machines are set at zero (000), the number registered on the protective counters and the number on the metal seal with which the machine is sealed. (Acts 1937, Ch. 159, Sec. 8; C. Supp. 1950, Sec. 2111.9 (Williams, Sec. 2111.8); impl. am. Acts 1953, Ch. 88, Sec. 11.)

TCA 2-1512 EQUIPMENT FURNISHED FOR MACHINE.—Every voting machine shall be furnished with an electric light or a proper substitute for one which shall give sufficient light to enable the voters while in the booth to read the ballot labels and suitable for the use of election

officers in examining the counters. All voting machines used in any election shall be provided with a curtain or other equipment so as to completely conceal the voter and his action while voting. (Acts 1937, Ch. 159, Sec. 11; C. Supp. 1950, Sec. 2111.12 (Williams, Sec. 2111.11).)

TCA 2-1513 INSTRUCTION OF ELECTION OFFICIALS—CERTIFICATE OF QUALIFICATION—NUMBER OF OFFICIALS PER PRECINCT.—As soon as practicable after the installation of voting machines in any [fol. 353] city, county, or town, and at least ten (10) days prior to the next succeeding primary or election and every general election thereafter there shall be held, under the direction of the commissioners of elections or other authority in charge of elections, a meeting for the purpose of instructing the judges of the election with the operating mechanism of the voting machines and the duties of the election officers during an election. Each judge of an election who has received such instruction and is fully qualified to properly conduct an election with the machine shall be given a certificate to that effect. For the purpose of giving such instructions the commissioners shall call such meeting or meetings of the judges of election as shall be necessary. The judges of election of each election precinct where machines are to be used shall attend such meeting or meetings and each judge shall receive for the time spent in receiving such instructions and qualifying to serve at an election one dollar ($1.00) in addition to car or railroad fare in going to and returning from each meeting. No judge of election shall serve at any election unless he shall have received such instruction and is fully qualified to perform his duties and has received a certificate to that effect, signed by one of the commissioners of elections or authorized representative. In precincts where voting machines are used four (4) election officials shall be appointed, provided that in precincts wherein two (2) voting machines are required five (5) election officials shall be appointed and that in precincts wherein three (3) voting machines are required six (6) election officials shall be appointed for each of such precincts. (Acts 1937, Ch. 159, Sec. 12; C. Supp. 1950, Sec. 2111.13 (Williams, Sec. 2111.12); impl. am. Acts 1953, Ch. 88, Sec. 11.)

TCA 2-1514 INSTRUCTION FACILITIES PROVIDED FOR VOTERS.—It shall be the duty of the commissioners of elections or other authority in charge of elections in every city, county, or town where voting machines are used to provide adequate facilities for the instruction of voters prior to an election and they shall cause to be placed in one or more convenient public places a voting machine with sample ballot labels affixed for the purpose of instructing voters in the operation of the machine. If the ballot labels that are used for this purpose are the same that will be used for the succeeding election the counting mechanism of the machine shall be concealed from view until the machine is prepared for the election and if the machine or machines are not to be used at the election the counting mechanism shall remain concealed from view until after [fol. 354] the election. (Acts 1937, Ch. 159, Sec. 13; C. Supp. 1950, Sec. 2111.14 (Williams, Sec. 2111.13); impl. am. Acts 1953, Ch. 88, Sec. 11.)

TCA 2-1515 ELECTION SUPPLIES—DELIVERY.—The supplies for the election shall be delivered to the judges of each election precinct on or before the day of election. (Acts 1937, Ch. 159, Sec. 14; C. Supp. 1950, Sec. 2111.15 (Williams, Sec. 2111.14).)

TCA 2-1516 INSTRUCTION CARDS AND SAMPLE BALLOTS—POSTING.—The election officers of each election precinct shall meet at the polling place at least one-half (½) hour before the time for opening the polls of the election. The judges shall cause to be posted conspicuously within the polling place the two (2) instruction cards and sample ballots showing a diagram of the face of the voting machine and shall perform such other preliminary duties as is prescribed by law. (Acts 1937, Ch. 159, Sec. 15; C. Supp. 1950, Sec. 2111.16 (Williams, Sec. 2111.15).)

TCA 2-1517 EXAMINATION AND FINAL PREPARATION OF MACHINES BY JUDGES BEFORE OPENING POLLS.—The keys to the voting machine shall be delivered to the judges at least one-half (½) hour before the time set for opening of the polls in a sealed envelope on which shall be written or printed the number and location of the voting machine, the number of the seal and the

number registered on the protective counter as reported by the voting machine custodian. The envelope containing the keys shall not be opened until the election officers of said precinct have examined the same to see that it has not been opened and shall further ascertain that the number registered on the protective counter and the numbers on the seals with which the machine is sealed correspond with the numbers written on the envelope containing the keys. If the envelope has been torn open, or if the numbers do not correspond, or any other discrepancy is found, it shall be the duty of the election officers to immediately acquaint the voting machine custodian or other authorized person with the facts who shall present himself at the polling place for the purpose of re-examining such machine and shall certify that it is properly arranged. If the numbers on the seals and the protective counter are found to agree with the numbers on the envelope, the judges shall then open the door concealing the counters and carefully examine every counter to see that it registers zero (000) and shall also allow the watchers to examine them. The judges shall then sign a certificate showing the delivery of the keys in a sealed envelope, the number on the seal, the number registered on [fol. 355] the protective counter, that all the counters are set at zero (000), and that the ballot labels are properly placed in the machine; provided that if any counter is found not to register at zero (000) and if it shall be impracticable for the custodian to arrive in time so as to adjust the counters before the time set for opening the polls, the judges shall immediately make a written statement of the designating letter and number of such counter together with the number registered thereon, and shall sign and post the same upon the wall of the polling place where it shall remain throughout the election day, and in filling out the statement of canvass they shall subtract such number from the number then registered on such counter. (Acts 1937, Ch. 159, Sec. 16; C. Supp. 1950, Sec. 2111.17 (Williams, Sec. 2111.16).)

TCA 2-1518 MANAGEMENT OF AND ATTENDANCE ON MACHINE DURING VOTING.—One judge shall attend the voting machine, the other officers shall attend the poll books and shall perform the usual duties of

election officials as provided by law. The voting machine shall be so placed and protected that it shall be accessible to only one (1) voter at a time and in full view of all of the election officers and watchers at the polling place. The election officer attending the machine shall inspect the face of the machine after every voter has voted, to ascertain whether the ballot labels are in their proper places and that the machine has not been injured or tampered with. During elections the door or other compartment of the machine shall not be unlocked or opened or the counters exposed except by the custodian or other authorized person, a statement of which shall be made and signed by the custodian or authorized person and attached to the returns. (Acts 1937, Ch. 159, Sec. 17; C. Supp. 1950, Sec. 2111.18 (Williams, Sec. 2111.17).)

TCA 2-1519 MODEL OF MACHINE AT POLLS FOR VOTERS' INSTRUCTION—ASSISTANCE RENDERED VOTERS ON REQUEST.—For the instruction of voters there shall be, so far as practicable, in each polling place, a mechanically operated model of a portion of the face of the machine. Such model furnished shall be located during the election in some place which the voter must pass to reach the machine and every voter before operating the machine shall be instructed regarding its operation and such instruction illustrated on the model and the voter given opportunity to personally operate the model. The voter's attention shall also be called to the diagram of the face of the machine so that the voter can become familiar with the location of the questions and the names of the offices [fol. 356] and candidates. If any voter after entering the voting machine booth shall ask for assistance such assistance will be given as is provided by law governing the use of paper ballots. (Acts 1937, Ch. 159, Sec. 18; C. Supp. 1950, Sec. 2111.19 (Williams, Sec. 2111.18).)

TCA 2-1520 MANNER OF VOTING—TIME LIMIT—REMOVAL OF VOTER.—The election officers shall admit but one (1) voter to the voting machine at one (1) time and only after it has been ascertained that he is entitled to vote. The voting on the voting machine shall be secret except as provided in cases of voting by assisted voters and no voter

shall remain within the voting machine booth longer than (2) minutes and if he shall refuse to leave it after the lapse of two (2) minutes he may be removed by the judges. (Acts 1937, Ch. 159, Sec. 19; C. Supp. 1950, Sec. 2111.20 (Williams, Sec. 2111.19).)

TCA 2-1521 UNOFFICIAL BALLOTS—USE.—If the official ballots at an election precinct at which a voting machine is to be used are not delivered at the time required or if after the delivery they shall become lost, destroyed or stolen the election judges shall immediately notify the clerk or other authority under whose direction the ballots are printed who shall cause other ballots to be prepared, printed or written as nearly in the form of the official ballot as practicable. The judges shall cause such substituted ballots to be used in the same manner as the official ballots. (Acts 1937, Ch. 159, Sec. 20; C. Supp. 1950, Sec. 2111.21 (Williams, Sec. 2111.20).)

TCA 2-1522 MACHINE OUT OF ORDER—REPAIRING, SUBSTITUTING OR USING PAPER BALLOTS.—If any voting machine being used in any election shall become out of order during such election it shall be repaired if possible or another machine substituted as promptly as possible. But in case such repair or substitution cannot be made, paper ballots printed or written, of any suitable form, may be used for the taking of votes and for such purpose the reduced sample ballots may be employed. (Acts 1937, Ch. 159, Sec. 21; C. Supp. 1950, Sec. 2111.22 (Williams, Sec. 2111.21).)

TCA 2-1523 LOCKING MACHINE UPON CLOSE OF POLLS—CANVASS OF VOTES—PROCLAMATION OF VOTE.—As soon as the polls of the election are closed, the judges of election there at shall immediately lock and seal the voting machine against voting. The judges shall then sign a certificate stating that the machine has been locked against voting and sealed; the number of voters as shown on the public counter, the number on the seal, the number [fol. 357] registered on the protective counter, and that the voting machine is closed and locked. The judges shall then open the counter compartment in the presence of the

watchers and all other persons who may be lawfully within the polling places, giving full view of all the counter numbers. One of the judges shall, under the scrutiny of the judge of a different political party, in the order of the offices as their titles are arranged on the machine, read and announce in distinct tones the designating number and letter on each counter for each candidate's name, the result as shown by the counter numbers, and shall then read the votes recorded for each office on the irregular ballots. He shall also in the same manner announce the vote on each constitutional amendment, proposition or other question. The counters shall not in the case of presidential electors be read consecutively along the party row or column, but shall always be read along the office columns or rows, completing the canvass for each office. If a separate ballot in each party column or row entitled "presidential electors" is provided, a vote for such ballot shall operate as a vote for all the candidates of such party for presidential electors. The vote as registered shall be entered on the statements of canvass in ink by two (2) judges of opposite political faiths but not including the chairman, in the same order on the space which has the same designating number and letter, after which the figures shall be verified by being called off in the same manner from the counters of the machine by a judge of opposite political faith from the chairman. The return of the canvass shall then be filled out, which shall show the total number of votes cast for each office, the number of votes cast for each candidate, as shown on his counter, and the number of votes for persons not nominated, and the statement shall be signed by each judge. After proclamation of the vote, ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the machine and any necessary corrections shall then and there be made by the board. If absentee voters' ballots have been voted, such ballots shall then be canvassed and tallied, the vote thereon for each candidate announced and added to the vote as recorded on the statement of votes cast by machine and a final proclamation made as to the total vote received by each candidate. Absentee voters' ballots and irregular ballots, inclosed in properly sealed packages respectively, and properly in-

dorsed shall be filed with the original statement of canvass. (Acts 1937, Ch. 159, Sec. 22; C. Supp. 1950, Sec. 2111.23 (Williams, Sec. 2111.22).)

[fol. 358] TCA 2-1525 STATEMENT OF CANVASS MADE OUT IN TRIPLICATE FORM.—In each election precinct where voting machines are used, statements of canvass shall be printed to conform with the type of voting machine used. The designating number and letter on the counter for each candidate shall be printed next to the candidate's name on the statements of canvass and shall provide for the entry of the number of votes for each candidate and the "yes" and "no" over each question; also for the absentee voters' ballots and total number of votes, by such ballots and by machine, for each candidate and upon each question. These statements shall be executed in triplicate in each election precinct and one (1) copy shall be delivered to the clerk of the township or city in which the election precinct is located, one (1) copy to the county clerk, commissioners of elections or other authority, as the governing body of the county, city or town may direct and one (1) copy shall be retained with the poll books and other election supplies. (Acts 1937, Ch. 159, Sec. 24; C. Supp. 1950, Sec. 2111.25 (Williams, Sec. 2111.24); impl. am. Acts 1953, Ch. 88, Sec. 11.)

TCA 2-1526 PERIOD MACHINES TO REMAIN LOCKED—PRESERVATION OF IRREGULAR BALLOTS.—The voting machine shall remain locked against voting for the period of thirty (30) days and as much longer as may be necessary or advisable because of any existing or threatened contest over the result of the election, except as provided by Sec. 2-1528 and except that it may be opened and all the data and figures therein examined upon the order of any court or judge of competent jurisdiction. Irregular ballots shall be preserved for six (6) months after such election and the packages thereof may be opened and the contents examined only upon order of a court or judge of competent jurisdiction, and after the expiration of such time, such ballots may be disposed of in the discretion of the officer or board having charge of them. (Acts 1937, Ch. 159, Sec. 25; C. Supp. 1950, Sec. 2111.26 (Williams, Sec. 2111-.25).)

TCA 2-1527 RETURN OF KEYS AT CLOSE OF ELECTION—CUSTODY OF VOTING MACHINES AND KEYS WHEN NOT IN USE.—At the close of the election the judges of each election precinct shall enclose the keys of the machine in an envelope on which shall be certified by the judges the number of the machine and the precinct and ward where it has been used, securely seal the envelope, indorse it and return it to the officer from whom the keys were received. The number on the seal and the number registered on the protective counter shall be written on the [fol. 359] envelope containing the keys. The local authorities adopting the machines shall have the custody thereof when not in use at an election and shall preserve and keep them in repair. All keys for voting machines shall be securely locked by the officers having them in charge. A public officer, who by any provision of law is entitled to the custody of the machine for any period of time, shall be entitled to the keys therefor of such machines in his charge. It shall be unlawful for any unauthorized person to have in his possession any key or keys of any voting machine; and all election officers or persons intrusted with such keys for election purposes or in the preparation of the machine therefor, shall not retain them longer than necessary to use them for such legal purpose. (Acts 1937, Ch. 159, Sec. 26; C. Supp. 1950, Sec. 2111.27 (Williams, Sec. 2111.26).)

TCA 2-1533 OFFICIALS PROHIBITED FROM INFLUENCING VOTERS—PERMISSIBLE INSTRUCTING.—It shall constitute a misdemeanor for any officer of said elections to go behind the curtains of the voting machines while any individual, not physically handicapped to such an extent as to be unable to operate the machine, is voting, or for any officer of said elections to influence, or attempt to influence, a voter at said election, provided, however, such officer may fully instruct any individual upon request as to the operation of said machine prior to the closing of the curtain on said machine. (Acts 1937, Ch. 159, Sec. 35, as added by Acts 1949, Ch. 122, Sec. 1; C. Supp. 1950, Sec. 2111.33 (Williams, Sec. 2111.34).)

TCA 2-1534 DISTRIBUTION OF COPIES OF CHAPTER.—It shall be the duty of the officers holding any of the

aforesaid elections to distribute copies of this chapter with the other election papers now provided. (Acts 1937, Ch. 159, Sec. 36, as added by Acts 1949, Ch. 122, Sec. 1; C. Supp. 1950, Sec. 2111.34 (Williams, Sec. 2111.35).)

TCA 2-1535 VIOLATIONS PUNISHABLE AS MISDEMEANORS.—Any violations of this chapter shall be a misdemeanor, and upon conviction shall be punishable as such. (Acts 1937, Ch. 159, Sec. 37, as added by Acts 1949, Ch. 122, Sec. 1; C. Supp. 1950, Sec. 2111.35 (Williams, Sec. 2111.36).)

Chapter 16

ABSENTEE VOTING

TCA 2-1601 PURPOSE OF CHAPTER—RECEIVING OF BALLOTS REGULATED.—It is declared to be the intent of the general assembly in the passage of this chapter to prevent fraud in elections by the use of absentee [fol. 360] voters' ballots and for this purpose the judges of elections and/or the primary election officers shall receive no absentee voter's ballot unless the provisions of this chapter shall have been literally complied with, all regulatory provisions hereof being made mandatory, except as herein otherwise expressly provided. (Acts 1949, Ch. 164, Sec. 1; C. Supp. 1950, Sec. 2253 (Williams, Sec. 2253.16).)

TCA 2-1602 REQUISITES TO VOTING AS ABSENTEE.—Any qualified voter of the state of Tennessee, or the wife of any such voter accompanying her husband, who by reason of business, occupation, health, education, or travel, is required to be, or who expects to be absent from the county in which such voter is entitled to vote on the day of any election or primary election, or any voter who, by reason of illness or physical disability, upon satisfactory proof of such illness or disability and inability to appear at his or her voting precinct, is authorized to and may vote in any and all elections (local, primary, general, state, federal and special) held in said voter's precinct for any purpose whatever. (Acts 1949, Ch. 164, Sec. 2; C. Supp. 1950, Sec. 2253.2 (Williams, Sec. 2253.17).)

TCA 2-1603 NOTICE OF INTENTION OR DESIRE TO VOTE BY ABSENTEE BALLOT—CONTENTS—FORM.—Such voter shall give notice, in writing, of his or her intention or desire to vote under the provisions of this chapter, to the commissioners of elections of his or her county. This notice shall include a statement that said voter will be or expects to be absent from the county on the day of the election or primary election, or shall be unable to appear at the polls on the day of the election or primary election because of his or her physical disability. Such notice shall be given to the commissioners of elections not more than forty (40) days nor less than five (5) days prior to such election or primary election if the voter be within the limits of the United States or its possessions, and not more than ninety (90) days nor less than twenty (20) days, if the voter be outside the limits of the United States or its possessions. Such notice shall set out the kind of election, the date thereof, the precinct, city, district and county in which the voter will vote, and the address to which the voter desires the ballot to be sent to him or her if to be sent by mail, or whether the ballot is to be delivered to the voter in person, and such notice may be delivered personally or by mail, by the voter to the commissioners of elections. Provided, that any voter, giving notice of her or his desire to vote by absentee ballot, while within the county, because of illness or physical disability, shall attach to said notice a statement from a licensed physician certifying that the [fol. 361] illness or disability of said voter is such that said voter cannot safely appear at the voting precinct in person. (Acts 1949, Ch. 164, Sec. 3; C. Supp. 1950, Sec. 2253.3 (Williams, Sec. 2253.4).)

TCA 2-1604 MAILING OF BALLOT UPON DETERMINATION OF ELIGIBILITY—CERTIFICATE ON ENVELOPE, FORM—INSTRUCTIONS.—The commissioners of elections shall, upon receipt of such notice, endorse upon same the date of its receipt, manner of receipt (whether by personal delivery or by mail), and shall compare the signature on the application with that of the voter on the registration record card, and endorse on the application a statement that they are, or are not, the same. Com-

missioners of elections shall, in formal meeting if they disapprove the application, endorse the reason for disapproval thereon and shall notify the applicant of such action; but, if the applicant is found to be entitled to vote and to secure a ballot as provided by the election laws, the commissioners of elections shall approve the application and endorse upon same the approval and the method of delivery, personally or by mail, and the date of delivery of the ballot, and shall as requested by the voter, deliver to the voter, either personally or by mail, all enclosed in the same envelope: (a) an official, numbered absentee ballot (all absentee ballots shall be numbered serially the commissioners of elections shall place upon the voter's application the number of the ballot sent to that voter); (b) an envelope to be used by the voter in returning to the commissioners of elections his prepared or marked ballot, which envelope shall have printed on the back thereof a certificate, substantially in form as follows: "I certify that I received the enclosed ballot as per my application; that the ballot was voted and marked or prepared by me or under my direction in the presence of the attesting official; that my name is .....

....., and that I am entitled to vote in the State of Tennessee, County of ....., City of ....., Ward or District No. ....., and Precinct ....., and that this ballot is being voted by me pursuant to the statutes of the State of Tennessee, this ..... day of ....., 19.....

Signed.....

Voter's Signature

[fol. 362] Attest:

(Signature of attesting official and official designation)" and which envelope shall have printed at the upper left-hand corner of the face thereof lines for the name and address of the voter and shall also have printed on the face thereof,

"County .....

City .....

Ward of District No. .....

Precinct .....

Kind of Election .....

Date of Election ....."

and shall be properly addressed to the commissioners of elections; and (c) a printed slip, giving full instructions, stating the offices to be filled, the number to be voted for in each instance, how to mark the ballot, and how it must be prepared and returned, and all other necessary information to enable the voter to cast a legal ballot under the election laws. (Acts 1949, Ch. 164, Sec. 4; C. Supp. 1950, Sec. 2253.4 (Williams, Sec. 2253.19).)

TCA 2-1605 RETENTION OF APPLICATIONS FOR BALLOTS.—All such notices or applications for ballots under this chapter shall be retained safely by the commissioners of elections for a period of thirty (30) days subsequent to the election, and such longer period of time as may be deemed necessary or required, and the same shall become a part of the public records system of the county, and shall be subject to inspection during the regular hours for business as maintained in other county offices. (Acts 1949, Ch. 164, Sec. 5; C. Supp. 1950, Sec. 2253.5 (Williams, Sec. 2253-.20).)

TCA 2-1606 PREPARATION OF BALLOT—MANNER—ADMINISTRATION OF OATH—RETURN OF BALLOT.—If the voter is absent from the county by reason of business, occupation, education or travel, upon receipt by mail of such ballot the voter shall take same before a postmaster or assistant postmaster, or any officer authorized to administer oaths, or a commissioned officer of the army, navy, air or marine corps (if the voter is in the military service), or an American consul or his assistant, and the ballot shall be prepared for voting in the presence of such official and with the assistance of such official, if re- [fol. 363] quested by the voter, and said ballot after being

so prepared shall then be placed in the envelope hereinabove described and provided for, and the envelope shall be carefully sealed and the certificate on the back of the envelope shall be filled out and the voter shall sign same, and the official before whom same was prepared shall attest the same by his signature and the official seal or stamp, if any, of the official shall be pressed or stamped on the back of such envelope, and such envelope containing the prepared ballot, and showing upon the face thereof the name of the voter, his or her address, and the precinct and the county at which such voter is voting, and being addressed to the commissioners of elections shall be sent by the voter to the commissioners of elections by registered mail.

If the voter is present in the county but by reason of illness or disability is unable to appear in person at the polls as provided in Section 2-1603, he or she shall, in the presence of an officer authorized to administer oaths, prepare and return the ballot to the commissioners of election in the manner set forth in the first paragraph of this section.

If the commissioners of elections, upon application, deliver the ballot to the voter personally, pursuant to the provisions of Secs. 2-1603, 2-1604, said voter may take the ballot before a postmaster or assistant postmaster, or any officer authorized to administer oaths, or may then and there, in the presence of the commissioners of elections or any one of them, prepare the ballot in the manner set forth in the first paragraph of this section, provided, that the voter need not return the sealed envelope containing the ballot to the commissioners of elections by registered mail if the commissioners of elections or any one of them is the attesting official to the affidavit on the back of said envelope. (Acts 1949, Ch. 164, Sec. 6; C. Supp. 1950, Sections 2253.6, 2253.7 (Williams, Sec. 2253.21).)

TCA 2-1608 LISTS OF ABSENTEE VOTERS—PUBLICATION OR POSTING—FAILURE PENALIZED.—At least ten (10) days prior to the election or primary election in which the absentee ballots are designed to be cast, the commissioners of elections shall cause to be published in a local newspaper, having general circulation in that county, a list of applicants for absentee ballots, and a supplemental list shall be so published on the fourth day prior to the

election or primary election. If there is no such newspaper, said list of applicants shall be posted in a conspicuous place at the courthouse and, in case of a municipal election, also at the city hall. Failure to publish or post such list shall not affect the validity of either a voter's ballot or the elec- [fol. 364] tion or primary election, but the commissioners of elections for such failure shall each be liable to indictment for a misdemeanor in office, and to be sentenced to pay a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00), or imprisoned in the county jail or workhouse for not less than ten (10) days nor more than thirty (30) days or both in the discretion of the court. (Acts 1949, Ch. 164, Sec. 8; mod. C. Supp. 1950, Sec. 2253.8 (Williams, Sec. 2253.23).)

TCA 2-1609. VOTED ABSENTEE BALLOT—PROCEDURE UPON RECEIPT BY COMMISSIONERS—PROCEDURE UPON RECEIPT OF BALLOTS AT POLLS.—Upon the receipt by the commissioners of elections of any envelope containing the ballot being voted under the provisions of this chapter, they shall endorse on the envelope the date of its receipt, and shall properly preserve the same, without the envelope or its contents being altered, and without the same being out of his custody or possession. They shall on the day of the election or primary election and not later than the closing hour of the day of the election or primary election, deliver to the judges holding the election, or officers holding the primary election, at the respective precinct of his county all absentee ballots so received to be voted at such precinct, in a sealed container, upon which there shall be a certificate signed by the commissioners of elections, substantially in form as follows: "We hereby certify that we have received from the voters whose names appear thereon, through the United States mail or personally, all of the sealed envelopes contained in this sealed container, which are being delivered to

....., judges holding the .....

election (or officers holding the .....

primary election), held on this ..... day of .....

....., 19....., at Precinct ....., Ward or District No. ....., City of ....., County of ....., in the State of Tennessee, there being ..... sealed envelopes herein and that the same have not been out of our possession or altered since being received; that proper applications for such ballots were made by the voters; that the signature of each applicant is the same as his signature on the registration record [fol. 365] card; and in our opinion, the provisions of the statutes have been complied with by the voters, and that the within ballots are entitled to be voted in such election (or primary election).

Witness our hands this ..... day of ....., 19.....

(Signed) .....

.....

.....

Commissioners of Elections."

Provided, however, that more than one (1) sealed container, containing the voters' envelopes and ballots and having thereon such signed certificate, may be used in the delivery by the commissioners of elections of such envelopes containing ballots to the judges holding the election or officers holding the primary election at each precinct; and the election judges or primary officers, when receiving such sealed container, shall give to the commissioners of elections a receipt for the same, showing the condition of the container, and the date and hour of the receipt by them of such sealed container and they shall retain the same in their possession or custody without breaking the seal thereon, and without any alteration thereof or of the contents thereof, until the seal is broken in the presence of the judges and clerks of election or officers of the primary election immediately after the closing of the polls on the day of the election or primary election, at which time the sealed container or containers are to be opened by the judges of election or officers of the primary election in the presence of

all or a majority of the judges and clerks or officers, and as each envelope is removed, the name of the voter is to be called and checked as if the voter were present, voting in person, and the judges or officers shall compare the signature of the voter on the affidavit on the envelope with the signature of the voter on the registration record card. Where one or more primary elections are held at the same time as an election the officers of the primary election shall compare the signatures on the envelope with the corresponding signatures on the registration record cards, which are in the possession of the judges holding the election. And if the signatures are the same, and it is found that the voter is a qualified voter of the precinct, and that the voter is otherwise qualified and legally entitled to cast his or her ballot at the time and place where the ballot is thus offered, [fol. 366] and the voter has not at the same election or primary election cast ballot in person, the name of the voter shall be enrolled by the clerks upon the registration book, and the envelope shall then be opened and the folded ballot taken therefrom, the number torn off and the ballot deposited in the regular ballot box without being examined or unfolded, and shall be counted the same as if the voter had appeared and cast his or her ballot in person; but if the judges of election or officers of the primary election shall determine that the person thus offering to vote is not a qualified voter of the precinct and is not entitled to vote, or that the voter has cast a ballot in person at that same election or primary election, or if the signature on the envelope containing the ballot is not the same as the voter's signature on the registration record card, the envelope containing the ballot shall in no case be opened, but the same in its sealed condition shall be returned together with the other records of the election or primary election, as part thereof, and shall be preserved by the officers whose duty it is to have custody of said records; provided, however, that if the commissioners of elections shall fail or neglect to endorse upon any such envelope containing the voter's ballot the date of its receipt by him, the ballot shall not for that reason be rejected by the judges of the election or officers of the primary election; and provided, further, that it shall be lawful for the commissioners of elections, in the delivery

of the sealed containers containing the ballots being voted under the provisions of this chapter to the judges of election or officers of the primary election, to transmit same to such judges or officers by the same person or persons or agency hired by them to deliver the ballot boxes containing the ballots and other supplies for holding such election or primary election, and such person or persons or agency shall upon such delivery of the sealed containers, take from judges or officers a receipt for same, and return such receipt to the commissioners of elections; and provided, further, that the delivery by them of the sealed containers containing the voters' sealed envelopes and ballots being voted under this chapter, and their certification accompanying same as hereinabove provided shall be satisfactory evidence that the provisions of this chapter have been complied with by both the persons seeking to vote and by the commissioners of elections. (Acts 1949, Ch. 164, Sec. 9; C. Supp. 1950, Sec. 2253.9 (Williams, Sec. 2253.24); mod. by 1953 amend. Const., Art. 4, Sec. 1.)

TCA 2-1610. ENVELOPES AND OTHER RECORDS PRESERVED—REJECTION OF BALLOTS, CERTIFI- [fol. 367] CATION OF REASONS.—When all ballots shall have been accounted for at the voting precinct, and either voted or rejected, the empty envelopes from which the voted ballots were taken, together with the sealed envelopes containing the rejected ballots, if any, together with all other records relating thereto, shall be made a part of the election or primary election records and certified to the county board of election commissioners, or to the county primary election boards, who shall preserve same in the manner provided by law for other records of election. The judges or primary officer, or a majority of them, shall certify their reason for rejecting each and every ballot rejected by them. (Acts 1949, Ch. 164, Sec. 10; C. Supp. 1950, Sec. 2253.10 (Williams, Sec. 2253.25).)

TCA 2-1611. PROCEDURE WHERE VOTING MACHINES ARE USED.—Where mechanical voting machines are authorized and used in a county, an official ballot box shall be furnished and used for the casting of absentee ballots for the purpose of preserving the secrecy of the

ballot. The absentee ballots shall be checked and cast or rejected in the same manner as hereinabove provided under the provisions of this chapter for the checking and casting or rejecting of absentee ballots where mechanical voting machines are not used, and the ballots thus cast shall be counted and tallied as under the general election laws of the state of Tennessee, and the tally totals thus obtained shall then be added to the returns taken from the counters of the mechanical voting machines. (Acts 1949, Ch. 164, Sec. 11; C. Supp. 1950, Sec. 2253.11 (Williams, Sec. 2253.26).)

TCA 2-1612. ABSENTEE VOTER DYING PRIOR TO ELECTION—DISPOSITION OF BALLOT—PENALTY FOR CASTING.—Whenever it shall be made to appear by due proof to the judges of elections or officers of the primary election that any voter who has marked and forwarded his ballot as provided in this chapter has died prior to the opening of the polls on the date of the election, or primary election, then the ballot of such deceased voter shall not be opened or cast, and the same shall be returned with the polls by the judges of election or officers of the primary election in the same manner as provided for rejected ballots in this chapter, but the casting of the ballot of a deceased voter shall not invalidate the election or primary election. But, where any judge of election or officer of a primary election shall knowingly or negligently allow a deceased voter's absentee ballot to be cast he shall be liable to indictment for a misdemeanor in office, and to be sentenced to pay a fine of not less than ten dollars ($10.00), nor more than fifty [fol. 368] dollars ($50.00), or imprisoned in the county jail or workhouse for not less than ten (10) nor more than thirty (30) days, or both, in the discretion of the court. (Acts 1949, Ch. 164, Sec. 12; C. Supp. 1950, Sec. 2253.12 (Williams, Sec. 2253.27).)

TCA 2-1614. RECEIVING ILLEGAL OR REJECTING LEGAL BALLOT PENALIZED.—It shall be a misdemeanor for the judges of election or officers of the primary election to receive and permit to be voted a ballot from any person who is not a qualified voter, or to reject a ballot from any person who is a qualified voter who has substantially complied with the provisions of this chapter,

and upon conviction such judges or officers shall be punished as in other misdemeanor cases. (Acts 1949, Ch. 164, Sec. 14; C. Supp. 1950, Sec. 2253.14 (Williams, Sec. 2253.29).)

TCA 2-1615. ILLEGALLY VOTING, ATTEMPTING TO DO SO OR AIDING AND ABETTING A FELONY.—It shall be a felony for any person who, for any reason, is not legally entitled to vote at the time and place where he votes or attempts to vote under this chapter, to vote or offer to do so; and it shall be a felony for any person to aid or abet another in voting illegally or offering to do so, with knowledge of such illegality, and upon conviction such person or persons shall be confined to the penitentiary for not less than one (1) year nor more than three (3) years, or, in the discretion of the jury, may be fined or confined in the county jail or workhouse, or both, and the venue shall be in the county where the legal ballot is cast or offered to be cast, without reference to the place where it was prepared or mailed. (Acts 1949, Ch. 164, Sec. 15; C. Supp. 1950, Sec. 2253.15 (Williams, Sec. 2253.30).)

TCA 2-1616. ELECTION OFFICIALS FAILING TO PERFORM DUTIES OR ACTING FRAUDULENTLY PENALIZED.—It shall be a felony for any of the election or primary election officials connected in any way with the casting of a ballot under the provisions of this chapter, to wilfully or fraudulently fail to perform any act required of him hereunder, or to do any act in connection therewith for the fraudulent purpose of preventing a legal voter from casting his ballot, or of causing an illegal ballot to be cast or offered to be cast, or in any way or manner to do any act fraudulently which may be calculated to affect the result of the election or primary election, and upon conviction such persons shall be punished as provided in Sec. 2-1615. Any conviction hereunder shall carry with it a judgment of infamy and a disqualification for the holding of any pub-
[fol. 369] lic office or place of trust under the laws of Tennessee, or exercising the elective franchise in Tennessee. (Acts 1949, Ch. 164, Sec. 16; C. Supp. 1950, Sec. 2253.16 (Williams, Sec. 2253.31).)

Chapter 22

PENAL PROVISIONS

TCA 2-2201. BREAKING UP ELECTION—PUNISHMENT.—If any person by force or violence break up or attempt to break up any legalized political convention, primary or final election, by assaulting the officers thereof, or by destroying or carrying off the ballot box, or by the use of other forcible or violent means to prevent a nomination being fairly made, or election from being fairly and legally conducted, he shall be guilty of a misdemeanor. (Code 1858, Sec. 4901 (deriv. Acts. 1799, Ch. 17); Shan., Sec. 6848; Mod. Code 1932, Sec. 11317.)

TCA 2-2202. PENALTIES ON OFFICERS HOLDING ELECTIONS—QUI TAM ACTION.—If any person holding an election refuse to deliver to a person elected to any office a fair copy of the list of votes, when demanded according to law, or hold an election in any other manner than as directed by law, or neglect to make or to forward due returns thereof, he shall forfeit and pay the sum of five hundred dollars ($500), to be recovered by action of debt in any court of record having cognizance thereof, with costs, one-half (½) to the use of the state, the other half to such person who sues for the same. (Code 1858, Sec. 936 (deriv. Acts 1796 (Mars.), Ch. 9, Sec. 9); Shan. Sec. 1374; Code 1932, Sec. 2176.)

TCA 2-2203. MISDEMEANORS BY OFFICERS HOLDING ELECTIONS.—It shall be a misdemeanor—

(1) For such officer to fail or refuse to administer the oaths, or any of them, required by law in elections.

(2) To set aside any judge regularly appointed to preside at such election, or to fail or refuse to administer the oaths prescribed for the judges of an election, they being present, willing and not incompetent to serve as judges of the election.

(3) Or to fail to perform any duty required of him in regard to any election.

(4) Or for any judge or clerk of an election to violate any of the provisions of the law to preserve the purity of [fol. 370] elections. (Code 1858, Sec. 937 (deriv. Acts 1841-42, Ch. 31, Sec. 8, 9, 12); Shan., Sec. 1375; Code 1932, Sec. 2177.)

TCA 2-2204. OFFICER VIOLATING ELECTION LAW.—Any judge, clerk, or executive officer who willfully or fraudulently violates any of the provisions made for the protection of primary or final elections, is guilty of a misdemeanor. (Code 1858, Sec. 4910 (deriv. Acts 1841-1842, Ch. 31, Sec. 8, 12); Shan., Sec. 6857, mod. Code 1932, Sec. 11326.)

TCA 2-2205. BRIBING OFFICER OF ELECTION.—If any person give, or offer to give a bribe to any clerk or canvasser of any primary or final election, or any executive officer, attending the same, as a consideration for any act done or omitted to be done contrary to his official duty in relation to such primary or final election, he shall be guilty of a misdemeanor. (Code 1858; Sec. 4904; Shan., Sec. 6851; mod. Code 1932, Sec. 11320.)

TCA 2-2206. APPROACHES CLOSE TO BALLOT BOX.—It shall be a misdemeanor for any person, except officers holding elections, to approach nearer to any voter or to any ballot box, than thirty (30) feet, when said voter is in the act of casting his ballot or offering or proposing to vote in any primary or final election. (Acts 1901, Ch. 142, Sec. 1; Shan., Sec. 6868A8; mod. Code 1932, Sec. 11338.)

TCA 2-2207. ILLEGAL VOTING.—It shall be a misdemeanor for any person knowingly to vote in any political convention or any election held under the Constitution or laws of this state, not being legally qualified to vote; or to vote under an assumed or fictitious name, whether such person be a qualified voter or not; or to vote more than once in the same or a different county or district. And any person convicted of any violation of any of said provisions shall be fined not less than fifty dollars ($50.00), or be confined in the county jail or workhouse not less than thirty (30) days or both, in the discretion of the court. (Code 1858, Sec. 938, 4896 (deriv. Acts 1841-42, Ch. 31, Sec. 1-4; 1853-

1854, Ch. 32, Sec. 8); Acts 1890 (1st E.S.), Ch. 25, Sec. 15; Shan., Sec. 1376, 6843; mod. Code 1932, Sec. 2178, 11312; modified.)

TCA 2-2208. PROCURING ILLEGAL VOTE.—It is a misdemeanor for any person to procure, aid, assist, counsel or advise another to give his vote in any convention, primary or final election, knowing such person is disqualified. (Code 1858; Sec. 4897; Shan., Sec. 6844; mod. Code 1932, Sec. 11313.)

[fol. 371] TCA 2-2209. FRAUDULENT VOTERS BROUGHT FROM ANOTHER STATE.—If any person bring or aid in bringing any fraudulent voters into this state for the purpose of practicing a fraud upon or in any primary or final election, such person shall, upon conviction, be imprisoned in the penitentiary not less than two (2) nor more than five (5) years. (Code 1858, Sec. 4909 (deriv. Acts 1841-42, Ch. 31, Sec. 19); Shan., Sec. 6856; mod. Code 1932, Sec. 11325.)

TCA 2-2210. PERJURY TO SWEAR OR AFFIRM FALSELY TO OATH.—It shall be perjury for any person, to whom an oath is legally administered in an election, knowingly or willfully to swear or affirm falsely. (Code 1858, Sec. 939 (deriv. Acts 1841-42, Ch. 31, Sec. 7); Shan., Sec. 1377; Code 1932, Sec. 2179.)

TCA 2-2211. VIOLENCE AND INTIMIDATION TO PREVENT VOTING.—It is a misdemeanor for any person, directly or indirectly, by himself or through any other person: By force or threats to prevent or endeavor to prevent any elector from voting at any primary or final election; or to make use of any violence, force or restraint, or to inflict or threaten the infliction of any injury, damage, harm or loss; or in any manner to practice intimidation upon or against any person in order to induce or compel him to vote or refrain from voting, to vote or refrain from voting for any particular person or measure, or on account of such person having voted or refrained from voting at any such election. (Acts 1897, Ch. 14, Sec. 4; Shan., Sec. 6868a5; mod. Code 1932, Sec. 11337.)

TCA 2-2216. BRIBING VOTERS.—It shall be unlawful for any person, directly or indirectly, by himself or through any other person:

(a) To pay, loan, contribute, or offer or promise to pay, loan, or contribute any money, property, or other valuable thing, to or for any voter, or to or for any other person, to induce such voter or any voter to vote or refrain from voting in any political convention, primary or final election of any kind or character, or to induce such voter or voters to vote or refrain from voting at any such convention, primary or final election for or against any particular person or measure, or on account of any voter having voted for or against any particular person or measure, or having gone to or remained away from the polls at any such convention, primary or final election.

(b) To give, offer, or promise any place, office or employment, or to promise or to procure any place, office or employment, to or for any voter, or to or for any other [fol. 372] person, in order to induce such voter to vote or refrain from voting at any convention, primary or final election, or to induce any voter at such convention or primary or final election to vote or refrain from voting for any particular person or measure.

(c) To advance or pay or cause to be paid any money or other valuable thing to or for the use of any voter, or to or for the use of any other person, with intent that the same or any part thereof shall be used in bribery at any primary or final election, or otherwise unlawfully used at, concerning, or in connection with any such primary or final election; or knowingly to pay or cause to be paid any money or other valuable thing in discharge or repayment of money or other valuable thing wholly or in part expended in bribery or other unlawful use at or in connection with any such primary or final election.

(d) To advance, pay or cause to be paid, as expenses or otherwise, to or for the use of any person, any money or other valuable thing, to induce such person or any person to work for, solicit or seek to influence votes for or against any particular person or measure, at or in connection with

any convention, primary or final election; to induce such person or persons to procure, solicit or influence any voter to attend, leave, or remain away from any such convention, primary or final election; or to pay or cause to be paid any money or other valuable thing to or for the use or benefit of any person in discharge or payment of or for time, labor, expenses, or services alleged to have been spent, performed, incurred, or rendered for or against any person, at or in connection with any such convention, primary or final election: Provided, this shall not include payment of expenses for soliciting attendance of any person upon party conventions, primaries, or final elections, and provided, further, nothing herein shall be construed to prohibit expenditures otherwise allowed by law. (Acts 1897, Ch. 14, Sec. 1; 1907, Ch. 402, Sec. 1, Shan., Sec. 6868a1, 6868a18; mod. Code 1932, Sec. 11332.)

TCA 2-2217. VOTER ACCEPTING BRIBE.—It shall be unlawful for any person, directly or indirectly, by himself or through any other person:

(a) To receive, agree to receive, or contract for, before or during any primary or final election or convention provided by law, any money, gift, loan, or other valuable consideration, or any office, place or employment, for himself or for any other person, for voting or agreeing to vote, or [fol. 373] for going to or remaining or agreeing to remain away from the polls, or refraining or agreeing to refrain from voting for any particular person or measure, at or in connection with any such convention, primary or election.

(b) To receive any money or other valuable thing during or after any convention, primary or final election provided by law, on account of himself or any other person, for voting or refraining from voting for any person or measure, or for going to the polls or remaining away from the polls at any such convention, primary or final election, or on account of having induced any person to vote or refrain from voting for any particular person or measure at any such convention, primary or final election. (Acts 1897, Ch. 14, Sec. 2; 1907, Ch. 402, Sec. 2; Shan., Secs. 6868a2, 6868a19; mod. Code 1932, Sec. 11333.)

TCA 2-2218. OFFICER WRONGFULLY CASTING VOTE OF ANOTHER OR TAMPERING WITH ELECTION.—It shall be unlawful for any officer of any convention, primary or final election willfully to cast the vote of another or for some person or measure different from that person or measure sought to be voted for by the person voting, or falsely to cast such vote, in any way, or to insert a ballot for one (1) person or measure when the person voting sought to vote for another person or measure, or to change, falsify or tamper with the returns of any primary or final election. (Acts 1907, Ch. 402, Sec. 1; Shan., Sec. 6868a18; mod. Code 1932, Sec. 11332.)

TCA 2-2219. PENALTY FOR VIOLATION OF SECTIONS 2-2216–2-2218.—Any person convicted of any of the offenses mentioned in Sections 2-2216–2-2218 shall be punished by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the penitentiary for not more than five (5) years, or by both fine and imprisonment, in the discretion of the jury, and shall be disqualified from holding office or exercising the elective franchise for a period of six (6) years, and in addition thereto, any corporation violating any of the provisions of Section 2-2216, shall forfeit its charter and right to do business in this state. Said fines, when collected, shall be paid into the public school fund of the state. (Acts 1897, Ch. 14, Sec. 7; 1907, Ch. 402, Sec. 4; Shan., Secs. 6868a12, 6868a21; mod. Code 1932, Sec. 11334.)

TCA 2-2222. FURNISHING A FALSE TICKET OR BALLOT.—It is a misdemeanor for any person to furnish an elector in any primary or final election with a ticket or [fol. 374] ballot, representing to him that it contains a name or names different from those written or printed thereon, with an intent to induce him to vote contrary to his inclination, or fraudulently or deceitfully to change a ballot, whereby such elector is deprived of voting for such person as he intended. (Code 1858, Sec. 4898 (deriv. Acts 1851-1852, Ch. 34); Shan., Sec. 6845; mod. Code 1932, Sec. 11314.)

TCA 2-2223. ILLITERATE VOTER—WILLFUL IMPOSITION UPON A MISDEMEANOR.—Any person who shall willfully and knowingly impose upon any illiterate

voter a ticket, in any election, contrary to his wish and desire, by falsely representing to such voter that the ticket proposed to him is such as he desires, shall be guilty of a misdemeanor. (Code 1858, Sec. 851 (deriv. Acts 1851-1852, Ch. 34); Shan., Sec. 1269; Code 1932, Sec. 2077.)

TCA 2-2224. MAKING FALSE ENTRY OR BALLOT.—It is a misdemeanor for any judge or clerk of any primary or final election, knowingly to make or consent to any false entry on the list of voters or poll book, or put in the ballot box, or permit so to be put in, any ballot not given by a voter, or so take out of such box or permit to be taken out any ballot deposited therein, except in the manner prescribed by law, or by any other act or omission designedly to destroy or change the ballots given by the electors. (Code 1858, Sec. 4905; Shan., Sec. 6852; mod. Code 1932, Sec. 11321.)

TCA 2-2225. UNLAWFUL RECEIPT OR REJECTION OF VOTES.—When any person offering to vote at any primary or final election is objected to by an elector as not possessing the requisite qualifications, if any judge of such primary or final election unlawfully permit him to vote without proving his qualification in the manner prescribed by law, or if any judge willfully refuse the vote of any person who complies with the requirements prescribed by law to prove his qualifications, he is guilty of a misdemeanor. (Code 1858, Sec. 4906 (deriv. Acts 1841-1842, Ch. 31, Sec. 6, 8, 11); Shan., Sec. 6853; mod. Code 1932, Sec. 11322.)

TCA 2-2226. TAKING TICKET OUT OF BALLOT BOX.—If any person fraudulently take any ticket out of the ballot box after it has been received, in any nominating convention or primary or final election, or shall fraudulently or unlawfully put any ticket into such ballot box, he is guilty of a misdemeanor. (Code 1858, Sec. 4902 (deriv. [fol. 375] Acts 1841-1842, Ch. 31, Sec. 13.); Shan., Sec. 6849; mod. Code 1932, Sec. 11318.)

TCA 2-2227. OPENING TICKET BY OFFICER.—Any officer holding any primary or final election, who opens and examines or reads the ticket of any voter at such elec-

tion, shall be fined not less than twenty-five dollars ($25.00); and, if a constable or sheriff, shall be removed from office. (Code 1858, Sec. 4903 (deriv. Acts 1831, Ch. 98, Sec. 1); Shan., Sec. 6850; mod. Code 1932, Sec. 11319.)

TCA 2-2228. ILLEGAL ACT BY OFFICIAL CAUSING LOSS OF BALLOTS OR VOTES OR INVALIDATING ELECTION.—If any judge, clerk, or executive officer designedly omit to do any official act required by law, or designedly do any illegal act, in relation to any primary or final election, by which act or omission the votes taken at any such election in any city, town, district or precinct are lost, or the electors thereof deprived of their suffrage at such election, or designedly do any act which renders such election void, he is guilty of a misdemeanor. (Code 1858, Sec. 4907 (deriv. Acts 1841-1842, Ch. 31, Sec. 12); Shan., Sec. 6854; mod. Code 1932, Sec. 11323.)

TCA 2-2229. FAILURE TO DELIVER POLL BOOK.—If any judge, clerk or messenger after having been deputed by the judges of election to carry the poll books of such election to the place where by law they are to be canvassed, willfully or negligently fail to deliver safely such poll books within the time prescribed by law, with the seal unbroken, he is guilty of a misdemeanor. (Code 1858, Sec. 4908; Shan., Sec. 6855; mod. Code 1932, Sec. 11324.)

TCA 2-2248. CONSTRUCTION OF CHAPTER.—The provisions of this chapter are to be construed remedially, so as to effect the objects had in view. (Code 1858, Sec. 4911; Shan., Sec. 6858; mod. Code 1932, Sec. 11327.)

TCA 2-2249. TAMPERING WITH OR MUTILATION OF VOTING MACHINE—PENALTY.—No person shall tamper with or mutilate any voting machine owned or used by any county or municipality in the state of Tennessee, nor shall any person deface such machine by marking on the same with ink, paste, lipstick, fingernail polish, or any other substance, provided that nothing herein contained shall be construed so as to prohibit any election commissioner, officer, or any custodian from performing the duties [fol. 376] enjoined upon him by law in connection with any voting machine. Any person violating this section shall be

guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed five hundred dollars ($500) or imprisonment not to exceed six (6) months, or both fine and imprisonment in the discretion of the court. (Acts 1955, Ch. 269, Secs. 1, 2.)

[fol. 379] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

NOTICE OF CHARLES W. BAKER, ET AL., OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed March 29, 1960

I. Notice is hereby given that Charles W. Baker, David N. Harsh, Edmund Orgill, Roy Dixon, Herbert S. Esch, Jack W. Lee, Mrs. James M. Todd, W. D. Hudson, Guy L. Smith, and John R. McGauley, original plaintiffs, and Ben West, Mayor of the City of Nashville, individually and on behalf of the City of Nashville, the City of Knoxville, Tennessee, and the City of Chattanooga, Tennessee, intervening plaintiffs in the above styled cause, hereby appeal to the Supreme Court of the United States from the final order dismissing the original and intervening complaints entered in this action on the 4th day of February, 1960. [fol. 380] This appeal is taken pursuant to 28 U.S.C.A., Section 1253.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(1) The complaint and amendment to original complaint filed by the original plaintiffs and the exhibits thereto.

(2) Proofs of service of process.

(3) The motions of the defendants to dismiss the complaint without the assemblage of a Three Judge District Court.

(4) The memorandum opinion of the Honorable William E. Miller overruling the motion to dismiss without assembling a Three Judge District Court.

(5) The notice given by District Judge William E. Miller to the Chief Judge of the Circuit Court for the Sixth Circuit, and the designation of the Three Judges constituting the Three Judge District Court hearing the plaintiffs.

(6) The intervening petition and the amended intervening petition of Ben West, Mayor of the City of Nashville, and the exhibits thereto.

[fol. 381] (7) The order entered allowing the intervention of Ben West, Mayor of the City of Nashville, as a plaintiff.

(8) The intervening petitions of the City of Knoxville and the City of Chattanooga, Tennessee, and any orders entered with respect thereto.

(9) The motion to dismiss the original and intervening petitioners' complaints.

(10) The per curiam opinion of the Three Judge District Court filed December 21, 1959, on the motion to dismiss.

(11) The order dismissing the original and intervening petitioners' complaints.

(12) The order of March 22, 1960, reflecting filing and consideration of the amended intervening petition of Ben West, Mayor, etc., and the admission of other intervening plaintiffs.

(13) This notice of appeal.

The foregoing designation of those items constituting a transcript of the record is intended to request the transmission to the Clerk of the Supreme Court of the United States

the entire record in this case, excluding the briefs and arguments of the parties.

III. The following questions are presented by this appeal:

[fol. 382] (1) Whether a State statute which in 1901 created an inequality of legislative representation and has been since retained by systematic and purposeful inaction through legislative refusal to obey the periodic reapportionment requirement of the State Constitution and the State constitutional guarantee of free and equal elections is a denial of equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution?

(2) Whether the inequality of legislative representation created by this same State statute is also an abridgement of the right to vote guaranteed by Section 2 of the Fourteenth Amendment?

(3) Whether the systematic discriminatory allocation of tax burdens and tax benefits created by the inequality of State legislative representation under this State statute is a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment?

(4) Whether a District Court of the United States is precluded by rulings of the United States Supreme Court from granting any form of relief where the District Court has found (a) that a State statute unequally apportions legislative representation in violation of a State Constitutional mandate requiring equal apportionment of legislative seats according to the number of qualified voters of the several counties and districts of the State, (b) that in consequence the State Legislature is guilty of a clear violation of the State Constitution and of the rights of the plaintiff [fol. 383] voters under the Federal and State Constitutions, and (c) that the evil is a serious one which should be corrected without delay.

(5) Whether a Federal Court can, and is under obligation, to declare invalid a State statute which clearly denies equal voting rights to appellants when both the State Constitution and the Fourteenth Amendment clearly require equal voting rights?

(6) Whether in declaring such a State statute invalid, the Federal Court need inquire at this time into the ultimate political solution or whether the Court can assume such solution will be provided by the State?

(7) Whether implementation of the declaration of invalidity is a question which need be determined now, or whether the determination of this question may be held in abeyance until at some future time it may become necessary?

(8) Whether Federal Courts are under an obligation to protect federally guaranteed voting rights with appropriate relief, including, if necessary, injunction to restrain enforcement of an unconstitutional State statute when it is clear that there is no other means of obtaining relief.

(9) Whether the Civil Rights Act amendments of 1957 require the Federal Courts to grant relief where there is [fol. 384] a violation of equal voting rights?

Charles S. Rhyne, 400 Hill Building, Washington 6, D. C., Attorney for Ben West, Mayor of the City of Nashville.

Walter Chandler, Home Federal Building, Memphis 3, Tennessee; Hobart Atkins, 410 Cumberland Avenue, S.W., Knoxville, Tennessee; Denney, Leftwich & Osborn, 415 Nashville Trust Building, Nashville 3, Tennessee, Attorneys for the Original Plaintiffs and for Ben West, Mayor of the City of Nashville.

Harris Gilbert, Nashville Trust Building, Nashville 3, Tennessee, Attorney for Ben West, Mayor of the City of Nashville.

Robert H. Jennings, City Hall, Nashville 3, Tennessee, City Attorney for the City of Nashville, Tennessee.

[fol. 385] Proof of Service (omitted in printing).

[fol. 386] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

[Title omitted]

ORDER AUTHORIZING TRANSMITTAL OF ORIGINAL RECORD—
April 28, 1960

Notice of appeal having been filed in this cause, and it appearing that the record is voluminous and that it would be impracticable to copy same, it is ordered by the Court that the original record be transmitted by the Clerk of this Court to the Supreme Court.

Enter, this 28 day of April, 1960.

Wm. E. Miller, United States District Judge.

[fol. 387] Clerk's Certificate to Foregoing Transcript (omitted in printing).

[fol. 389]

SUPREME COURT OF THE UNITED STATES

No. 103, October Term, 1960

CHARLES W. BAKER, et al., Appellants,

vs.

JOE C. CARR, et al.

ORDER NOTING PROBABLE JURISDICTION—November 21, 1960

Appeal from the United States District Court
for the Middle District of Tennessee.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdic-

November 21, 1960
tion is noted.